

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2008
First Extraordinary Session, 2008
Second Extraordinary Session, 2008
Second Extraordinary Session, 2007

Volume II
Chapters 122 - 234
Chapters 1 - 9
Chapters 1 - 19
Chapters 1 - 14

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

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



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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2008

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 th - 78 th
	Randy Swartzmiller (D)	New Cumberland	75 th - 78 th
Second	Timothy R. Ennis (D)	Wellsburg	72 nd - 78 th
	Jack Yost (D)	Wellsburg	76 th - 78 th
Third	Tal Hutchins (D)	Wheeling	72 nd - 74 th ; 78 th
	Orphy Klempa (D)	Wheeling	78 th
Fourth	Kenneth D. Tucker (D)	Moundsville	73 rd - 78 th
	Scott G. Varner (D)	Moundsville	71 st - 78 th
Fifth	Dave Pethel (D)	Hundred	69 th - 71 st ; 74 th - 78 th
Sixth	William Roger Romine (R)	Sistersville	75 th - 78 th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71 st - 78 th
Ninth	Larry W. Border (R)	Davisville	70 th - 78 th
Tenth	Tom Azinger (R)	Vienna	72 nd - 78 th
	John Ellem (R)	Parkersburg	75 th - 78 th
Eleventh	Daniel Poling (D)	Parkersburg	78 th
	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 78 th
Twelfth	Mitch Carmichael (R)	Ripley	75 th - 78 th
Thirteenth	Dale Martin (D)	Poca	75 th - 78 th
	Brady Paxton (D)	Liberty	71 st ; Appt. 4/22/99, 74 th - 78 th
Fourteenth	Troy Andes (R)	Hurricane	78 th
	Patti Eagloski Schoen (R)	Scott Depot	76 th - 78 th
Fifteenth	Kevin J. Craig (D)	Huntington	75 th - 78 th
	Jim Morgan (D)	Huntington	69 th - 70 th ; 75 th - 78 th
Sixteenth	Carol Miller (R)	Huntington	78 th
	Kelli Sobonya (R)	Huntington	76 th - 78 th
Seventeenth	Dale Stephens (D)	Huntington	75 th ; 77 th - 78 th
	Doug Reynolds (D)	Huntington	78 th
Eighteenth	Richard Thompson (D)	Lavelette	65 th ; Resigned 6/81; 76 th - 78 th
	Don C. Perdue (D)	Prichard	74 th - 78 th
Nineteenth	Larry W. Barker (D)	Madison	77 th - 78 th
Twentieth	Ted Ellis (D)	Logan	78 th
	Jeff Eldridge (D)	Harts	77 th - 78 th
Twenty-first	Ralph Rodighiero (D)	Logan	78 th
	Lidella Wilson Hrutkay (D)	Logan	75 th - 78 th
Twenty-second	K. Steven Kominar (D)	Kermit	72 nd - 78 th
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 th ; 71 st - 78 th
Twenty-third	Richard Browning (D)	Oceana	69 th - 72 nd ; 76 th - 78 th
	Mike Burdiss (D)	Mullens	78 th
Twenty-fourth	Clif Moore (D)	Thorpe	77 th - 78 th
Twenty-fifth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71 st ; 72 nd - 78 th
	Marshall Long (D)	Princeton	75 th - 78 th
Twenty-sixth	Thomas Mike Porter (R)	Princeton	77 th - 78 th
	Gerald Crosier (D)	Union	76 th - 78 th
Twenty-seventh	Louis Gall (D)	Beckley	Appt. 8/10/07, 78 th
	Melvin Kessler (D)	Beckley	78 th
Twenty-eighth	Virginia Mahan (D)	Green Sulphur Springs	73 rd - 78 th
	Linda Sumner (R)	Beckley	76 th - 78 th
Twenty-ninth	Ricky Moye (D)	Crab Orchard	78 th

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73 rd - 78 th
	Ray Canterbury (R)	Ronceverte	75 th - 78 th
Twenty-ninth	Margaret Anne Staggers (D)	Fayetteville	78 th
	David G. Perry (D)	Oak Hill	75 th - 78 th
	John Pino (D)	Oak Hill	67 th - 68 th ; 71 st - 78 th
Thirtieth	Bonnie Brown (D)	South Charleston	66 th - 68 th ; 70 th ; 75 th - 78 th
	Barbara Burruss Hatfield (D)	South Charleston	67 th - 69 th ; 74 th - 78 th
	Nancy Peoples Guthrie (D)	Charleston	78 th
	² Dave Higgins (D)	Charleston	Appt. 4/16/07, 78 th
	Corey Palumbo (D)	Charleston	76 th - 78 th
	Sharon Spencer (D)	Charleston	66 th , 68 th - 71 st ; 73 rd - 78 th
	Danny Wells (D)	Charleston	77 th - 78 th
Thirty-first	Carrie Webster (D)	Charleston	75 th - 78 th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73 rd ; 74 th - 78 th
	Patrick Lane (R)	Cross Lanes	77 th - 78 th
	Ron Walters (R)	Charleston	71 st - 73 rd ; 75 th - 78 th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73 rd - 78 th
Thirty-fourth	Brent Boggs (D)	Gassaway	73 rd - 78 th
Thirty-fifth	Sam J. Argento (D)	Mt. Nebo	77 th - 78 th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71 st - 72 nd ; 76 th - 78 th
Thirty-seventh	William G. Hartman (D)	Elkins	76 th - 78 th
	Bill Proudfoot (D)	Elkins	70 th - 78 th
Thirty-eighth	Doug Stalaker (D)	Weston	72 nd - 78 th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76 th - 78 th
Fortieth	Mary M. Poling (D)	Moatsville	75 th - 78 th
Forty-first	Richard J. Iaquina (D)	Clarksburg	76 th - 78 th
	Samuel J. Cann (D)	Clarksburg	72 nd - 78 th
	Ron Fragale (D)	Clarksburg	70 th - 73 rd ; 75 th - 78 th
	Tim Miley (D)	Bridgeport	77 th - 78 th
	Jeffery L. Tansill (R)	Grafton	77 th - 78 th
Forty-third	Michael Caputo (D)	Fairmont	73 rd - 78 th
	Tim Manchin (D)	Fairmont	76 th - 78 th
Forty-fourth	Linda Longstreth (D)	Fairmont	77 th - 78 th
	Robert D. Beach (D)	Morgantown	Appt. 5/98; 73 rd - 78 th
	Barbara Evans Fleischauer (D)	Morgantown	72 nd - 78 th
	Alex J. Shook (D)	Morgantown	78 th
	Charlene Marshall (D)	Morgantown	74 th - 78 th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93, 71 st ; 72 nd - 78 th
	Stan Shaver (D)	Tunnelton	74 th - 78 th
Forty-sixth	Harold K. Michael (D)	Moorefield	69 th - 78 th
Forty-eighth	Allen V. Evans (R)	Dorcas	70 th - 78 th
Forty-ninth	Robert A. Schadler (R)	Keyser	69 th - 70 th ; 74 th - 78 th
Fiftieth	Ruth Rowan (R)	Points	77 th - 78 th
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78 th
Fifty-second	Craig P. Blair (R)	Martinsburg	76 th - 78 th
Fifty-third	Jonathan Miller (R)	Bunker Hill	78 th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76 th - 78 th
Fifty-fifth	John Overington (R)	Martinsburg	67 th - 78 th
Fifty-sixth	Robert C. Tabb (D)	Kearneysville	76 th - 78 th
Fifty-seventh	John Doyle (D)	Shepherdstown	66 th ; 71 st - 78 th
Fifty-eighth	Locke Wysong (D)	Charles Town	77 th - 78 th

1 Appointed to fill the vacancy created by the resignation of Ron Thompson.

2 Appointed to fill the vacancy created by the resignation of Jon Amores.

(D) Democrats 72
(R) Republicans 28

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 2008

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

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2008

STANDING

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*), Beach, Ellis, Guthrie, Hartman, Higgins, Hutchins, Iaquinta, Kessler, Mahan, Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley, Azinger, Border, Carmichael, Schoen and Walters.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Hutchins (*Vice Chair*), Brown, Campbell, Caputo, Doyle, Guthrie, Hatfield, Higgins, 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, Fragale, Frederick, Gall, Moye, Perry, Pethtel, Rodigherio, Shaver, Stephens, Wells, Wysong, Duke, Ireland, J. Miller, Romine, Rowan, Sumner and Tansill.

FINANCE

White (*Chair*), Boggs (*Vice Chair*), Barker, Campbell, Craig, Doyle, Iaquinta, 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, Higgins, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, 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*) Pethtel (*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, Gall, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, 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.

JOINT COMMITTEES

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

STATUTORY LEGISLATIVE COMMISSIONS

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, 2008

STANDING

AGRICULTURE AND NATURAL RESOURCES

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

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 Sybolt.

FINANCE

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

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.

JOINT COMMITTEES

ENROLLED BILLS

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

GOVERNMENT AND FINANCE

Tomblin (*Co-Chair*), Chafin, Helmick, Kessler, Sharpe, Caruth and Deem.

LEGISLATIVE RULE-MAKING REVIEW

Minard (*Chair*), Fanning (*Vice Chair*), Prezioso, Unger, Boley and Facemyer.



CHAPTER 122

(S.B. 653 - By Senators Minard and White)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §33-6-5a of the Code of West Virginia, 1931, as amended, relating to application requirements for life and accident and sickness insurance and permitting internet sales of and applications for life and accident and sickness insurance.

Be it enacted by the Legislature of West Virginia:

That §33-6-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

1 (a) All applications for life or accident and sickness
2 insurance, as defined in section ten, article one of this
3 chapter, to be issued in this state shall:

4 (1) If application is made by the proposed insured,
5 include the signature of both the proposed insured and the
6 agent;

7 (2) If application is made by the proposed insured, be
8 completed by a licensed and appointed agent in the presence
9 of the proposed insured;

10 (3) If application is made by a spouse upon the other
11 spouse, include the signature of the spouse procuring the
12 insurance and the agent; or

13 (4) If application is made by any person having an
14 insurable interest in the life of a minor, or any person upon
15 whom a minor is dependent for support and maintenance,
16 include the signature of the person procuring the insurance
17 and the agent.

18 (b) Upon the hand delivery of a policy of life or accident
19 and sickness insurance, a delivery receipt shall be signed and
20 dated by the insured and returned to the insurer for filing.

21 If the delivery of a policy of life or accident and sickness
22 insurance is by mail, it shall either: (1) Be sent by certified
23 mail from the insurer, return receipt requested, and the date
24 of receipt noted on the receipt is the date of receipt for the
25 purposes of section eleven-b of this article; or (2) the insurer
26 shall prepare a certificate of mailing. For the purposes of this
27 section, a certificate of mailing means a record prepared and
28 retained in accordance with general business practices
29 indicating the date that the policy was mailed to the insured
30 and it is presumed that the policy was received by the insured
31 twenty days from the date of mailing.

32 (c) Any amendments to the application after it is
33 originally signed by the proposed insured shall be expressly
34 disclosed in writing to the proposed insured and his or her
35 signature is obtained to verify agreement with the changes:
36 *Provided*, That the failure of the insurer to notify the insured
37 of any change, or the failure of the insured to execute the

38 signature, does not invalidate the existence of insurance
39 coverage.

40 (d) The following shall be exempt from the requirements
41 of subdivisions (1), (2), (3) and (4), subsection (a) of this
42 section:

43 (1) Group life or group accident and sickness insurance
44 applications if the insurer accepts all prospective principal
45 insureds with no underwriting restrictions on the individual
46 proposed insureds;

47 (2) Group life or group accident and sickness insurance
48 applications if there is underwriting as to the individual
49 proposed insureds and the applications are completed without
50 a licensed and appointed agent present, but the insurer
51 verifies the information on the application by telephone with
52 the proposed insured;

53 (3) Applications for life or accident and sickness
54 insurance if the insurance is solely mass marketed and the
55 only contact with the insured is by mail, mass media or
56 telephone; and

57 (4) Applications for life or accident and sickness
58 insurance if the insurer is an underwriter for supplemental
59 retirement plans and additional retirement plans provided to
60 eligible employees of the governing boards of state
61 institutions of higher education pursuant to the provisions of
62 section four-a, article twenty-three, chapter eighteen of this
63 code.

64 (e) The taking of an application for life or accident and
65 sickness insurance and otherwise completing a transaction
66 electronically is exempt from the requirements of subdivision
67 (2), subsection (a) of this section.

●

CHAPTER 123

**(H.B. 4557 - By Delegates Ashley, Azinger, Hamilton,
Hartman, Kominar and Michael)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §33-12-8 of the Code of West Virginia, 1931, as amended, relating to continuing education for individual insurance producers; allowing continuing education credit for active annual membership in professional organizations or associations; and providing for carry-over of hours of continuing education into the following biennial reporting period.

Be it enacted by the Legislature of West Virginia:

That §33-12-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8. Continuing education required.

1 The purpose of this provision is to provide continuing
2 education under guidelines set up under the Insurance
3 Commissioner's office, with the guidelines to be set up under
4 the Board of Insurance Agent Education.

5 (a) This section applies to individual insurance producers
6 licensed to engage in the sale of the following types of
7 insurance:

8 (1) *Life*. -- Life insurance coverage on human lives,
9 including benefits of endowment and annuities, and may
10 include benefits in the event of death or dismemberment by
11 accident and benefits for disability income;

12 (2) *Accident and health or sickness*. -- Insurance
13 coverage for sickness, bodily injury or accidental death and
14 may include benefits for disability income;

15 (3) *Property*. -- Property insurance coverage for the direct
16 or consequential loss or damage to property of every kind;

17 (4) *Casualty*. -- Insurance coverage against legal liability,
18 including that for death, injury or disability or damage to real
19 or personal property;

20 (5) *Variable life and variable annuity products*. --
21 Insurance coverage provided under variable life insurance
22 contracts and variable annuities;

23 (6) *Personal lines*. -- Property and casualty insurance
24 coverage sold to individuals and families for primarily
25 noncommercial purposes; and

26 (7) Any other line of insurance permitted under state laws
27 or regulations.

28 (b) This section does not apply to:

29 (1) Individual insurance producers holding limited line
30 credit insurance licenses for any kind or kinds of insurance
31 offered in connection with loans or other credit transactions
32 or insurance for which an examination is not required by the
33 commissioner, nor does it apply to any limited or restricted
34 license as the commissioner may exempt; and

35 (2) Individual insurance producers selling credit life or
36 credit accident and health insurance.

37 (c) (1) The Board of Insurance Agent Education as
38 established by section seven of this article shall develop a
39 program of continuing insurance education and submit the
40 proposal for the approval of the commissioner on or before
41 the thirty-first day of December of each year. No program
42 may be approved by the commissioner that includes a
43 requirement that any individual insurance producer complete
44 more than twenty-four hours of continuing insurance
45 education biennially. No program may be approved by the
46 commissioner that includes a requirement that any of the
47 following individual insurance producers complete more than
48 six hours of continuing insurance education biennially:

49 (A) Individual insurance producers who sell only preneed
50 burial insurance contracts; and

51 (B) Individual insurance producers who engage solely in
52 telemarketing insurance products by a scripted presentation
53 which scripted presentation has been filed with and approved
54 by the commissioner.

55 (C) The biennium mandatory continuing insurance
56 education provisions of this section become effective on the
57 reporting period beginning the first day of July, two thousand
58 six.

59 (2) The commissioner and the board, under standards
60 established by the board, may approve any course or program
61 of instruction developed or sponsored by an authorized
62 insurer, accredited college or university, agents' association,
63 insurance trade association or independent program of
64 instruction that presents the criteria and the number of hours
65 that the board and commissioner determine appropriate for
66 the purpose of this section.

67 (d) Individual insurance producers licensed to sell
68 insurance and who are not otherwise exempt shall

69 satisfactorily complete the courses or programs of
70 instructions the commissioner may prescribe.

71 (e) Every individual insurance producer subject to the
72 continuing education requirements shall furnish, at intervals
73 and on forms as may be prescribed by the commissioner,
74 written certification listing the courses, programs or seminars
75 of instruction successfully completed by the person. The
76 certification shall be executed by, or on behalf of, the
77 organization sponsoring the courses, programs or seminars of
78 instruction.

79 (f) Subject to the approval by the commissioner, the
80 active annual membership by an individual insurance
81 producer in an organization or association recognized and
82 approved by the commissioner as a state, regional or national
83 professional insurance organization or association may be
84 approved by the commissioner for up to two hours of
85 continuing insurance education: *Provided*, That not more
86 than two hours of continuing insurance education may be
87 awarded to an individual insurance producer for membership
88 in a professional insurance organization during a biennial
89 reporting period. Credit for continuing insurance education
90 pursuant to this subdivision may only be awarded to
91 individual insurance producers who are required to complete
92 more than six hours of continuing education biennially.

93 (g) Individual insurance producers who are required to
94 complete more than six hours of continuing education
95 biennially and who exceed the minimum continuing
96 education requirement for the biennial reporting period may
97 carry-over a maximum of six credit hours only into the next
98 reporting period.

99 (h) Any individual insurance producer failing to meet the
100 requirements mandated in this section and who has not been
101 granted an extension of time, with respect to the

102 requirements, or who has submitted to the commissioner a
103 false or fraudulent certificate of compliance shall have his or
104 her license automatically suspended and no further license
105 may be issued to the person for any kind or kinds of
106 insurance until the person demonstrates to the satisfaction of
107 the commissioner that he or she has complied with all of the
108 requirements mandated by this section and all other
109 applicable laws or rules.

110 (i) The commissioner shall notify the individual
111 insurance producer of his or her suspension pursuant to
112 subsection (h) of this section by certified mail, return receipt
113 requested, to the last address on file with the commissioner
114 pursuant to subsection (e), section nine of this article. Any
115 individual insurance producer who has had a suspension
116 order entered against him or her pursuant to this section may,
117 within thirty calendar days of receipt of the order, file with
118 the commissioner a request for a hearing for reconsideration
119 of the matter.

120 (j) Any individual insurance producer who does not
121 satisfactorily demonstrate compliance with this section and
122 all other laws applicable thereto as of the last day of the
123 biennium following his or her suspension shall have his or her
124 license automatically canceled and is subject to the education and
125 examination requirements of section five of this article.

126 (k) The commissioner is authorized to hire personnel and
127 make reasonable expenditures considered necessary for
128 purposes of establishing and maintaining a system of
129 continuing education for insurers. The commissioner shall
130 charge a fee of twenty-five dollars to continuing education
131 providers for each continuing education course submitted for
132 approval which shall be used to maintain the continuing
133 education system. The commissioner may, at his or her
134 discretion, designate an outside administrator to provide all
135 of or part of the administrative duties of the continuing

136 education system subject to direction and approval by the
137 commissioner. The fees charged by the outside administrator
138 shall be paid by the continuing education providers. In
139 addition to fees charged by the outside administrator, the
140 outside administrator shall collect and remit to the
141 commissioner the twenty-five dollar course submission fee.



CHAPTER 124

(Com. Sub. for S.B. 704 - By Senator Minard)

[Passed February 29, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all relating to viatical settlements of life insurance policies between life insurance policyholders and third parties; providing for licensing of viatical settlement providers and brokers; requiring payment of fees; authorizing proposal of and promulgation of rules, including emergency rules; and providing civil and criminal penalties for violations.

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 §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-

13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all to read as follows:

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

- §33-13C-1. Short title.
- §33-13C-2. Definitions.
- §33-13C-3. License and bond requirements.
- §33-13C-4. License revocation and denial.
- §33-13C-5. Approval of viatical settlement contracts and disclosure statements.
- §33-13C-6. Reporting requirements and privacy.
- §33-13C-7. Examination or investigation.
- §33-13C-8. Disclosure to viator.
- §33-13C-9. Disclosure to insurer.
- §33-13C-10. General rules.
- §33-13C-11. Prohibited practices.
- §33-13C-12. Prohibited practices and conflicts of interest.
- §33-13C-13. Advertising for viatical settlements.
- §33-13C-14. Fraud prevention and control.
- §33-13C-15. Injunctions; civil remedies; cease and desist.
- §33-13C-16. Criminal penalties.
- §33-13C-17. Authority to promulgate rules.
- §33-13C-18. No preemption of securities laws.

§33-13C-1. Short title.

- 1 This article may be cited as the “Viatical Settlements
- 2 Act”.

§33-13C-2. Definitions.

- 1 As used in this article:
- 2 (1) “Advertising” means any written, electronic or printed
- 3 communication or any communication by means of recorded
- 4 telephone messages or transmitted on radio, television, the
- 5 internet or similar communications media, including film
- 6 strips, motion pictures and videos, published, disseminated,
- 7 circulated or placed, directly or indirectly, before the public
- 8 in this state for the purpose of creating an interest in or
- 9 inducing a person to sell, assign, devise, bequest or transfer

10 the death benefit or ownership of a life insurance policy
11 pursuant to a viatical settlement contract.

12 (2) “Business of viatical settlements” means an activity
13 involved in, but not limited to, the offering, soliciting,
14 negotiating, procuring, effectuating, purchasing, investing,
15 financing, monitoring, tracking, underwriting, selling,
16 transferring, assigning, pledging, hypothecating or in any
17 other manner, acquiring an interest in a life insurance policy
18 by means of a viatical settlement contract.

19 (3) “Chronically ill” means having been certified within
20 the preceding twelve-month period by a licensed health
21 professional as:

22 (A) Being unable to perform, without substantial
23 assistance from another individual, at least two of the
24 following activities of daily living, including, but not limited
25 to, eating, toileting, transferring, bathing, dressing or
26 continence due to a loss of functional capacity;

27 (B) Requiring substantial supervision to protect the
28 individual from threats to health and safety due to severe
29 cognitive impairment; or

30 (C) Having a level of disability similar to that described
31 in paragraph (A) of this subdivision as determined under
32 regulations prescribed by the United States Secretary of the
33 Treasury in consultation with the United States Secretary of
34 Health and Human Services.

35 (4) “Financing entity” means an underwriter, placement
36 agent, lender, purchaser of securities, purchaser of a policy or
37 certificate from a viatical settlement provider, credit enhancer
38 or any entity that has a direct ownership in a policy or
39 certificate that is the subject of a viatical settlement contract,
40 but whose principal activity related to the transaction is

41 providing funds to effect the viatical settlement or purchase
42 of one or more viaticated policies and who has an agreement
43 in writing with one or more licensed viatical settlement
44 providers to finance the acquisition of viatical settlement
45 contracts. “Financing entity” does not include a
46 nonaccredited investor or a viatical settlement purchaser.

47 (5) “Fraudulent viatical settlement act” includes:

48 (A) Acts or omissions committed by any person who
49 knowingly or with intent to defraud, for the purpose of
50 depriving another of property or for pecuniary gain, commits
51 or permits its employees or its agents to engage in acts
52 including:

53 (i) Presenting, causing to be presented or preparing with
54 knowledge or belief that it will be presented to or by a
55 viatical settlement provider, viatical settlement broker,
56 viatical settlement purchaser, financing entity, insurer,
57 insurance producer or any other person, false material
58 information or concealing material information, as part of, in
59 support of or concerning a fact material to one or more of the
60 following:

61 (I) An application for the issuance of a viatical settlement
62 contract or insurance policy;

63 (II) The underwriting of a viatical settlement contract or
64 insurance policy;

65 (III) A claim for payment or benefit pursuant to a viatical
66 settlement contract or insurance policy;

67 (IV) Premiums paid on an insurance policy;

68 (V) Payments and changes in ownership or beneficiary
69 made in accordance with the terms of a viatical settlement
70 contract or insurance policy;

71 (VI) The reinstatement or conversion of an insurance
72 policy;

73 (VII) In the solicitation, offer, effectuation or sale of a
74 viatical settlement contract or insurance policy;

75 (VIII) The issuance of written evidence of viatical
76 settlement contract or insurance; or

77 (IX) A financing transaction; and

78 (ii) Employing any plan, financial structure, device,
79 scheme or artifice to defraud related to viaticated policies;

80 (B) In the furtherance of a fraud or to prevent the
81 detection of a fraud any person commits or permits its
82 employees or its agents to:

83 (i) Remove, conceal, alter, destroy or sequester from the
84 commissioner the assets or records of a licensee or other
85 person engaged in the business of viatical settlements;

86 (ii) Misrepresent or conceal the financial condition of a
87 licensee, financing entity, insurer or other person;

88 (iii) Transact the business of viatical settlements in
89 violation of laws requiring a license, certificate of authority
90 or other legal authority for the transaction of the business of
91 viatical settlements; or

92 (iv) File with the commissioner or the equivalent chief
93 insurance regulatory official of another jurisdiction a
94 document containing false information or otherwise conceals
95 information about a material fact from the commissioner;

96 (C) Embezzlement, theft, misappropriation or conversion
97 of moneys, funds, premiums, credits or other property of a

98 viatical settlement provider, insurer, insured, viator,
99 insurance policyowner or any other person engaged in the
100 business of viatical settlements or insurance;

101 (D) Recklessly entering into, negotiating, brokering,
102 otherwise dealing in a viatical settlement contract, the subject
103 of which is a life insurance policy that was obtained by
104 presenting false information concerning any fact material to
105 the policy or by concealing, for the purpose of misleading
106 another, information concerning any fact material to the
107 policy, where the person or the persons intended to defraud
108 the policy's issuer, the viatical settlement provider or the
109 viator;

110 (E) Facilitating the change of state of ownership of a
111 policy or certificate or the state of residency of a viator to a
112 state or jurisdiction that does not have a law similar to this
113 article for the express purposes of evading or avoiding the
114 provisions of this article;

115 (F) Issuing, soliciting, marketing or otherwise promoting
116 stranger-originated life insurance; or

117 (G) Attempting to commit, assisting, aiding or abetting in
118 the commission of, or conspiracy to commit the acts or
119 omissions specified in this subsection.

120 (6) "Life insurance producer" means any person licensed
121 in accordance with the provisions of article twelve of this
122 chapter as a resident or nonresident insurance producer who
123 has received qualification or authority for a license in the life
124 insurance coverage line of authority.

125 (7) "Person" means a natural person or a legal entity,
126 including, without limitation, an individual, partnership,
127 limited liability company, association, trust or corporation.

128 (8) “Policy” means an individual or group policy, group
129 certificate, contract or arrangement of life insurance owned
130 by a resident of this state, regardless of whether delivered or
131 issued for delivery in this state.

132 (9) “Related provider trust” means a titling trust or other
133 trust established by a licensed viatical settlement provider or
134 a financing entity for the sole purpose of holding the
135 ownership or beneficial interest in purchased policies in
136 connection with a financing transaction. The trust shall have
137 a written agreement with the licensed viatical settlement
138 provider under which the licensed viatical settlement
139 provider is responsible for ensuring compliance with all
140 statutory and regulatory requirements and under which the
141 trust agrees to make all records and files related to viatical
142 settlement transactions available to the commissioner as if
143 those records and files were maintained directly by the
144 licensed viatical settlement provider.

145 (10) “Special purpose entity” means a corporation,
146 partnership, trust, limited liability company or other similar
147 entity formed solely to provide either directly or indirectly
148 access, either directly or indirectly, to institutional capital
149 markets for a financing entity or licensed viatical settlement
150 provider or in connection with a transaction in which the
151 securities in the special purpose entity are acquired by
152 qualified institutional buyers.

153 (11) “Terminally ill” means certified by a physician as
154 having an illness or physical condition that can reasonably be
155 anticipated to result in death in twenty-four months or less.

156 (12) “Viatical settlement broker” means a person who,
157 working exclusively on behalf of a viator and for a fee,
158 commission or other valuable consideration, offers or
159 attempts to negotiate viatical settlement contracts between a
160 viator and one or more viatical settlement providers or one or

161 more viatical settlement brokers. Notwithstanding the manner
162 in which the viatical settlement broker is compensated, a
163 viatical settlement broker is deemed to represent only the
164 viator, and not the insurer or the viatical settlement provider,
165 and owes a fiduciary duty to the viator to act according to the
166 viator's instructions and in the best interest of the viator. The
167 term does not include an attorney, certified public accountant
168 or a financial planner accredited by a nationally recognized
169 accreditation agency, who is retained to represent the viator
170 and whose compensation is not paid directly or indirectly by
171 the viatical settlement provider or purchaser, provided that
172 the viatical settlement activities are incidental to the
173 professional practice of the attorney, certified public
174 accountant or financial planner.

175 (13) "Viatical settlement contract" means any of the
176 following:

177 (A) A written agreement between a viator and a viatical
178 settlement provider or any affiliate of the viatical settlement
179 provider establishing the terms under which compensation or
180 anything of value is or will be paid, which compensation or
181 value is less than the expected death benefits of the policy, in
182 return for the viator's present or future assignment, transfer,
183 sale, devise or bequest of the death benefit or ownership of
184 any portion of the insurance policy or certificate of insurance;

185 (B) A premium finance loan made for a life insurance
186 policy by a lender to a viator on, before or after the date of
187 issuance of the policy in either of the following situations:

188 (i) The viator or the insured receives a guarantee of a
189 future viatical settlement value of the policy; or

190 (ii) The viator or the insured agrees to sell the policy or
191 any portion of its death benefit on any date following the
192 issuance of the policy.

193 (C) The transfer or acquisition for compensation or
194 anything of value for ownership or beneficial interest in a
195 trust or other person that owns such a policy if the trust or
196 other person was formed or availed of for the principal
197 purpose of acquiring one or more life insurance policies.

198 (D) “Viatical settlement contract” does not include any of
199 the following unless part of a plan, scheme, device or artifice
200 to avoid the application of this article:

201 (i) A policy loan or accelerated death benefit made by the
202 insurer pursuant to the policy’s terms;

203 (ii) Loan proceeds that are used solely to pay premiums
204 for the policy and the costs of the loan, including interest,
205 arrangement fees, utilization fees and similar fees, closing
206 costs, legal fees and expenses, trustee fees and expenses and
207 third-party collateral provider fees and expenses, including
208 fees payable to letter of credit issuers;

209 (iii) A loan made by a bank or other licensed financial
210 institution in which the lender takes an interest in a life
211 insurance policy solely to secure repayment of a loan or, if
212 there is a default on the loan and the policy is transferred, the
213 transfer of such a policy by the lender, provided that the
214 default itself is not pursuant to an agreement or
215 understanding with any other person for the purpose of
216 evading regulation under this article;

217 (iv) An agreement where all the parties are closely related
218 to the insured by blood or law or have a lawful substantial
219 economic interest in the continued life, health and bodily
220 safety of the person insured or are trusts established primarily
221 for the benefit of such parties;

222 (v) Any designation, consent or agreement by an insured
223 who is an employee of an employer in connection with the

224 purchase by the employer, or trust established by the
225 employer, of life insurance on the life of the employee;

226 (vi) Any of the following business succession planning
227 arrangements if those arrangements are bona fide
228 arrangements:

229 (I) An arrangement between one or more shareholders in
230 a corporation or between a corporation and one or more of its
231 shareholders or one or more trusts established by its
232 shareholders;

233 (II) An arrangement between one or more partners in a
234 partnership or between a partnership and one or more of its
235 partners or one or more trusts established by its partners; or

236 (III) An arrangement between one or more members in a
237 limited liability company or between a limited liability
238 company and one or more of its members or one or more
239 trusts established by its members;

240 (vii) An agreement entered into by a service recipient, or
241 a trust established by the service recipient and a service
242 provider, or a trust established by the service provider who
243 performs significant services for the service recipient's trade
244 or business; or

245 (viii) Any other contract, transaction or arrangement
246 exempted from the definition of a viatical settlement contract
247 by the commissioner based on a determination that the
248 contract, transaction or arrangement is not of the type
249 intended to be regulated by this article.

250 (14)(A) "Viatical settlement provider" means a person,
251 other than a viator, that enters into or effectuates a viatical
252 settlement contract with a viator resident in this state.

253 (B) “Viatical settlement provider” does not include:

254 (i) A bank, savings bank, savings and loan association,
255 credit union or other licensed lending institution that takes an
256 assignment of a life insurance policy solely as collateral for
257 a loan;

258 (ii) The issuer of the life insurance policy;

259 (iii) An authorized or eligible insurer that provides stop
260 loss coverage or financial guaranty insurance to a viatical
261 settlement provider, purchaser, financing entity, special
262 purpose entity or related provider trust;

263 (iv) An individual who enters into or effectuates no more
264 than one viatical settlement contract in a calendar year for the
265 transfer of life insurance policies for any value less than the
266 expected death benefit;

267 (v) A financing entity;

268 (vi) A special purpose entity;

269 (vii) A related provider trust;

270 (viii) A viatical settlement purchaser; or

271 (ix) Any other person that the commissioner determines
272 is not the type of person intended to be covered by the
273 definition of viatical settlement provider.

274 (15)(A) “Viatical settlement purchaser” means a person
275 who provides a sum of money as consideration for a life
276 insurance policy or an interest in the death benefits of a life
277 insurance policy, or a person who owns or acquires or is
278 entitled to a beneficial interest in a trust that owns a viatical
279 settlement contract or is the beneficiary of a life insurance

280 policy that has been or will be the subject of a viatical
281 settlement contract, for the purpose of deriving an economic
282 benefit.

283 (B) “Viatical settlement purchaser” does not include:

284 (i) A licensee under this article;

285 (ii) An accredited investor or qualified institution buyer
286 as defined in, respectively, Rule 501(a) or Rule 144A
287 promulgated under the Federal Securities Act of 1933, as
288 amended;

289 (iii) A financing entity;

290 (iv) A special purpose entity; or

291 (v) A related provider trust.

292 (16) “Viaticated policy” means a life insurance policy or
293 certificate that has been acquired by a viatical settlement
294 provider pursuant to a viatical settlement contract.

295 (17)(A) “Viator” means the owner of a life insurance
296 policy or a certificate holder under a group policy who
297 resides in this state and enters or seeks to enter into a viatical
298 settlement contract. For the purposes of this article, a viator
299 shall not be limited to an owner of a life insurance policy or
300 a certificate holder under a group policy insuring the life of
301 an individual with a terminal or chronic illness or condition
302 except where specifically addressed. If there is more than
303 one viator on a single policy and the viators are residents of
304 different states, the transaction shall be governed by the law
305 of the state in which the viator having the largest percentage
306 ownership resides or, if the viators hold equal ownership, the
307 state of residence of one viator agreed upon in writing by all
308 the viators.

309 (B) “Viator” does not include:

310 (i) A licensee under this article, including a life insurance
311 producer acting as a viatical settlement broker pursuant to
312 this article;

313 (ii) Qualified institution buyer as defined, respectively, in
314 Rule 144A promulgated under the Federal Securities Act of
315 1933, as amended;

316 (iii) A financing entity;

317 (iv) A special purpose entity; or

318 (v) A related provider trust.

319 (18) “Stranger-originated life insurance” or “STOLI”
320 means a plan or agreement that provides for both of the
321 following at the time of the origination of a life insurance
322 policy.

323 (A) The purchase of a life insurance policy by an
324 applicant primarily for the benefit of a third-party investor
325 that lacks insurable interest in the insured person; and

326 (B) The subsequent accrual, directly or indirectly, to that
327 third-party investor of the legal or beneficial ownership of the
328 policy or the benefits of the policy.

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

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

4 (2) (A) An insurance producer who is authorized to sell
5 life insurance in this state pursuant to a resident or
6 nonresident license issued in accordance with the provisions

7 of article twelve of this chapter may operate as a viatical
8 settlement broker without obtaining a license pursuant to this
9 section if the viatical settlement activities of the producer are
10 incidental to the producer's insurance business activities.

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

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

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

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

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

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

45 (2) Is competent and trustworthy and intends to act in
46 good faith in the capacity involved by the license applied for;

47 (3) Has a good business reputation and has had
48 experience, training or education so as to be qualified in the
49 business for which the license is applied for;

50 (4) Has demonstrated evidence of financial responsibility
51 in a format prescribed by the commissioner by possessing a
52 minimum equity of not less than two hundred fifty thousand
53 dollars in cash or cash equivalents reflected in the applicant's
54 audited financial statements or through a surety bond
55 executed and issued by an insurer authorized to issue surety
56 bonds in this state in the amount of two hundred fifty
57 thousand dollars: *Provided*, That the commissioner shall
58 accept, as evidence of financial responsibility, proof that
59 financial instruments in accordance with the requirements in
60 this paragraph have been filed with a state in which the
61 applicant is licensed as a viatical settlement provider or
62 viatical settlement broker. Any surety bond issued pursuant
63 to this subdivision shall be in the favor of this state and shall
64 specifically authorize recovery by the commissioner on
65 behalf of any person in this state who sustained damages as
66 the result of erroneous acts, failure to act, conviction of fraud
67 or conviction of unfair practices by the viatical settlement
68 provider or viatical settlement broker. The commissioner may
69 ask for evidence of financial responsibility at any time he or
70 she deems necessary.

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

73 (6) Has provided an antifraud plan that meets the
74 requirements of subsection (g), section fourteen of this
75 article.

76 (e) The commissioner shall not issue a license to a
77 nonresident applicant unless the applicant files with the
78 commissioner either a written designation of an agent for
79 service of process or the applicant's written irrevocable
80 consent that any action against the applicant may be
81 commenced against the applicant by service of process on the
82 commissioner.

83 (f) A viatical settlement provider or viatical settlement
84 broker shall provide to the commissioner new or revised
85 information about officers, ten percent or more stockholders,
86 partners, directors, members or designated employees within
87 thirty days of the change.

88 (g) An individual licensed as a viatical settlement broker
89 shall complete on a biennial basis fifteen hours of training
90 related to viatical settlements and viatical settlement
91 transactions, as required by the commissioner. A life
92 insurance producer operating as a viatical settlement broker
93 pursuant to subdivision (2), subsection (a) of this section
94 shall not be subject to the requirements of this subsection.
95 Any person failing to meet the requirements of this
96 subsection shall be subject to the penalties imposed by the
97 commissioner.

§33-13C-4. License revocation and denial.

1 (a) The commissioner may refuse to issue, suspend,
2 revoke, place on probation or refuse to renew the license of
3 a viatical settlement provider or viatical settlement broker if
4 the commissioner finds that:

5 (1) There was any material misrepresentation in the
6 application for the license;

7 (2) The licensee or any officer, partner, member or key
8 management personnel has been convicted of fraudulent or
9 dishonest practices, is subject to a final administrative action
10 or is otherwise shown to be untrustworthy or incompetent;

11 (3) The viatical settlement provider demonstrates a
12 pattern of unreasonable payments to viators;

13 (4) The licensee or any officer, partner, member or key
14 management personnel has been found guilty of, or has
15 pleaded guilty or nolo contendere to, any felony, or to a
16 misdemeanor involving fraud or moral turpitude, regardless
17 of whether a judgment of conviction has been entered by the
18 court;

19 (5) The viatical settlement provider has entered into any
20 viatical settlement contract that has not been approved
21 pursuant to this article;

22 (6) The viatical settlement provider has failed to honor
23 contractual obligations set out in a viatical settlement
24 contract;

25 (7) The licensee no longer meets the requirements for
26 initial licensure;

27 (8) The viatical settlement provider has assigned,
28 transferred or pledged a viaticated policy to a person other
29 than a viatical settlement provider licensed in this state,
30 viatical settlement purchaser, an accredited investor or
31 qualified institutional buyer as defined respectively in Rule
32 501(a) or Rule 144A promulgated under the Federal
33 Securities Act of 1933, as amended, financing entity, special
34 purpose entity or related provider trust; or

35 (9) The licensee or any officer, partner, member or key
36 management personnel has violated any provision of this
37 article.

38 (b) The commissioner may suspend, revoke or refuse to
39 renew the license of a viatical settlement broker or a life
40 insurance producer operating as a viatical settlement broker
41 pursuant to this article if the commissioner finds that the
42 viatical settlement broker or life insurance producer has
43 violated the provisions of this article or has otherwise
44 engaged in bad faith conduct with one or more viators.

45 (c) If the commissioner denies a license application or
46 suspends, revokes or refuses to renew the license of a viatical
47 settlement provider, viatical settlement broker or life
48 insurance producer operating as a viatical settlement broker,
49 the commissioner shall conduct a hearing in accordance with
50 section thirteen, article two of this chapter.

§33-13C-5. Approval of viatical settlement contracts and disclosure statements.

1 (a) A person shall not use a viatical settlement contract
2 form or provide a disclosure statement form to a viator in this
3 state unless it has been filed with and approved by the
4 commissioner. The commissioner shall disapprove a viatical
5 settlement contract form, disclosure statement form or any
6 provision contained therein if, in the commissioner's opinion,
7 the contract, disclosure form or any provision contained
8 therein fail to meet the requirements of section eight, ten,
9 thirteen or fourteen of this article, is unreasonable, is contrary
10 to the interests of the public or is otherwise misleading or
11 unfair to the viator. At the commissioner's discretion, the
12 commissioner may require the submission of advertising
13 material.

14 (b) Forms required to be filed are subject to the
15 provisions of section eight, article six of this chapter and
16 shall be deemed "forms for noncommercial insurance". The
17 commissioner shall establish fees for form filings by rule,
18 including emergency rule.

§33-13C-6. Reporting requirements and privacy.

1 (a) On or before the first day of March of each year, each
2 viatical settlement provider shall file with the commissioner
3 an annual statement containing such information as the
4 commissioner may prescribe. The information shall be
5 limited to only those transactions where the viator is a
6 resident of this state. Individual transaction data regarding
7 the business of viatical settlements or data that could
8 compromise the privacy of personal, financial and health
9 information of the viator or insured shall be filed with the
10 commissioner on a confidential basis.

11 (b) Except as otherwise allowed or required by law, a
12 viatical settlement provider, viatical settlement broker,
13 insurance company, insurance producer, information bureau,
14 rating agency or company or any other person with actual
15 knowledge of an insured's identity, shall not disclose that
16 identity as an insured, or the insured's financial or medical
17 information to any other person unless the disclosure:

18 (1) Is necessary to effect a viatical settlement between the
19 viator and a viatical settlement provider and the viator and
20 insured have provided prior written consent to the disclosure;

21 (2) Is provided in response to an investigation or
22 examination by the commissioner or any other governmental
23 officer or agency or pursuant to the requirements of
24 subsection (c), section fourteen of this article;

25 (3) Is a term of or condition to the transfer of a policy by
26 one viatical settlement provider to another viatical settlement
27 provider;

28 (4) Is necessary to permit a financing entity, related
29 provider trust or special purpose entity to finance the
30 purchase of policies by a viatical settlement provider and the

31 viator and insured have provided prior written consent to the
32 disclosure;

33 (5) Is necessary to allow the viatical settlement provider
34 or viatical settlement broker or their authorized representative
35 to make contacts for the purpose of determining health status;
36 or

37 (6) Is required to purchase stop loss coverage or financial
38 guaranty insurance.

§33-13C-7. Examination or investigation.

1 (a) (1) The commissioner may conduct an examination
2 under this article of a licensee as often as he or she deems
3 appropriate after considering such matters as consumer
4 complaints, results of financial statement analyses and ratios,
5 changes in management or ownership, actuarial opinions,
6 report of independent certified public accountants and other
7 relevant criteria as determined by the commissioner.

8 (2) For purposes of completing an examination of a
9 licensee under this article, the commissioner may examine or
10 investigate any person, or the business of any person, in so
11 far as the examination or investigation is, in the sole
12 discretion of the commissioner, necessary or material to the
13 examination of the licensee.

14 (3) In lieu of an examination under this article of any
15 foreign or alien licensee licensed in this state, the
16 commissioner may, at the commissioner's discretion, accept
17 an examination report on the licensee as prepared by the
18 commissioner for the licensee's state of domicile or port-of-
19 entry state; as far as practical, the examination of a foreign or
20 alien licensee shall be made in cooperation with the insurance
21 supervisory officials of other states in which the licensee
22 transacts business.

23 (b) (1) A person required to be licensed by this article
24 shall for five years retain copies of all records and documents
25 related to the requirements of this article, including, but not
26 limited to, proposed, offered or executed contracts, purchase
27 agreements, underwriting documents, policy forms and
28 applications from the date of the proposal, offer or execution
29 of the contract or purchase agreement, whichever is later; and
30 all checks, drafts or other evidence and documentation
31 related to the payment, transfer, deposit or release of funds
32 from the date of the transaction: *Provided*, That this
33 subsection does not relieve a person of the obligation to
34 produce these documents to the commissioner after the
35 retention period has expired if the person has retained the
36 documents.

37 (2) Records required to be retained by this section shall
38 be legible and complete and may be retained in paper,
39 photograph, microprocess, magnetic, mechanical or
40 electronic media or by any process that accurately reproduces
41 or forms a durable medium for the reproduction of a record.

42 (c) (1) Upon determining that an examination should be
43 conducted, the commissioner shall issue an examination
44 warrant appointing one or more examiners to perform the
45 examination and instructing them as to the scope of the
46 examination. In conducting the examination, the examiner
47 shall observe those guidelines and procedures set forth in the
48 Examiners Handbook adopted by the National Association of
49 Insurance Commissioners (NAIC). The commissioner may
50 also employ such other guidelines or procedures as the
51 commissioner may deem appropriate.

52 (2) Every licensee or person from whom information is
53 sought, its officers, directors and agents shall provide to the
54 examiners timely, convenient and free access at all
55 reasonable hours at its offices to all books, records, accounts,
56 papers, documents, assets and computer or other recordings

57 relating to the property, assets, business and affairs of the
58 licensee being examined. The officers, directors, employees
59 and agents of the licensee or person shall facilitate the
60 examination and aid in the examination so far as it is in their
61 power to do so. The refusal of a licensee, by its officers,
62 directors, employees or agents, to submit to examination or
63 to comply with any reasonable written request of the
64 commissioner shall be grounds for suspension or refusal of,
65 or nonrenewal of any license or authority held by the licensee
66 to engage in the viatical settlement business or other business
67 subject to the commissioner's jurisdiction. Any proceedings
68 for suspension, revocation or refusal of any license or
69 authority shall be conducted pursuant to section eleven,
70 article two of this chapter.

71 (3) The commissioner shall have the power to issue
72 subpoenas, to administer oaths and to examine under oath
73 any person as to any matter pertinent to the examination.
74 Upon the failure or refusal of a person to obey a subpoena,
75 the commissioner may petition a court of competent
76 jurisdiction and, upon proper showing, the court may enter an
77 order compelling the witness to appear and testify or produce
78 documentary evidence. Failure to obey the court order is
79 punishable as contempt of court.

80 (4) When making an examination under this article, the
81 commissioner may retain attorneys, appraisers, independent
82 actuaries, independent certified public accountants or other
83 professionals and specialists as examiners, the reasonable
84 cost of which shall be borne by the licensee that is the subject
85 of the examination.

86 (5) Nothing contained in this article shall be construed to
87 limit the commissioner's authority to terminate or suspend an
88 examination in order to pursue other legal or regulatory
89 action pursuant to the insurance laws of this state. Findings
90 of fact and conclusions made pursuant to any examination

91 shall be prima facie evidence in any legal or regulatory
92 action.

93 (6) No later than sixty days following completion of the
94 examination, the examiner in charge shall file with the
95 commissioner a verified written report of examination under
96 oath. Upon receipt of the verified report, the commissioner
97 shall transmit the report to the licensee examined, together
98 with a notice that shall afford the licensee examined a
99 reasonable opportunity of not more than thirty days to make
100 a written submission or rebuttal with respect to any matters
101 contained in the examination report.

102 (7) In the event the commissioner determines that
103 regulatory action is appropriate as a result of an examination,
104 the commissioner may initiate any proceedings or actions
105 provided by law.

106 (d) (1) Names and individual identification data for all
107 viators is considered private and confidential information and
108 shall not be disclosed by the commissioner unless required by
109 law.

110 (2) Except as otherwise provided in this article, all
111 examination reports, working papers, recorded information,
112 documents and copies thereof produced by, obtained by or
113 disclosed to the commissioner or any other person in the
114 course of an examination made under this article, or in the
115 course of analysis or investigation by the commissioner of
116 the financial condition or market conduct of a licensee is
117 confidential by law and privileged, is not subject to the public
118 disclosure provisions of article one, chapter twenty-nine-b of
119 this code, is not subject to subpoena and is not subject to
120 discovery or admissible in evidence in any private civil
121 action. The commissioner is authorized to use the
122 documents, materials or other information in the furtherance
123 of any regulatory or legal action brought as part of the
124 commissioner's official duties.

125 (3) Documents, materials or other information, including,
126 but not limited to, all working papers, and copies thereof, in
127 the possession or control of the NAIC and its affiliates and
128 subsidiaries is confidential by law and privileged, is not
129 subject to subpoena, and is not subject to discovery or
130 admissible in evidence in any private civil action if they are:

131 (A) Created, produced or obtained by or disclosed to the
132 NAIC and its affiliates and subsidiaries in the course of
133 assisting an examination made under this article, or assisting
134 a commissioner in the analysis or investigation of the
135 financial condition or market conduct of a licensee; or

136 (B) Disclosed to the NAIC and its affiliates and
137 subsidiaries under subdivision (5) of this subsection by a
138 commissioner.

139 (4) Neither the commissioner nor any person that
140 received the documents, material or other information while
141 acting under the authority of the commissioner, including the
142 NAIC and its affiliates and subsidiaries, shall be permitted to
143 testify in any private civil action concerning any confidential
144 documents, materials or information subject to subdivision
145 (1) of this subsection.

146 (5) In order to assist in the performance of the
147 commissioner's duties, the commissioner:

148 (A) May share documents, materials or other information,
149 including the confidential and privileged documents,
150 materials or information subject to subdivision (1) of this
151 subsection, with other state, federal and international
152 regulatory agencies, with the NAIC and its affiliates and
153 subsidiaries, and with state, federal and international law-
154 enforcement authorities, provided that the recipient agrees to
155 maintain the confidentiality and privileged status of the
156 document, material, communication or other information;

157 (B) May receive documents, materials, communications
158 or information, including otherwise confidential and
159 privileged documents, materials or information, from the
160 NAIC and its affiliates and subsidiaries, and from regulatory
161 and law-enforcement officials of other foreign or domestic
162 jurisdictions, and shall maintain as confidential or privileged
163 any document, material or information received with notice
164 or the understanding that it is confidential or privileged under
165 the jurisdiction that is the source of the document, material or
166 information; and

167 (C) May enter into agreements governing sharing and use
168 of information consistent with this subsection.

169 (6) No waiver of any applicable privilege or claim of
170 confidentiality in the documents, materials or information
171 shall occur as a result of disclosure to the commissioner
172 under this section or as a result of sharing as authorized in
173 subdivision (5) of this subsection.

174 (7) A privilege established under the law of any state or
175 jurisdiction that is substantially similar to the privilege
176 established under this subsection shall be available and
177 enforced in any proceeding in, and in any court of, this state.

178 (8) Nothing contained in this article shall prevent or be
179 construed as prohibiting the commissioner from disclosing
180 the content of an examination report, preliminary
181 examination report or results, or any matter relating thereto,
182 to the commissioner of any other state or country, or to law-
183 enforcement officials of this or any other state or agency of
184 the federal government at any time or to the NAIC, so long
185 as such agency or office receiving the report or matters
186 relating thereto agrees in writing to hold it confidential and
187 in a manner consistent with this article.

188 (e) (1) An examiner may not be appointed by the
189 commissioner if the examiner, either directly or indirectly,

190 has a conflict of interest or is affiliated with the management
191 of or owns a pecuniary interest in any person subject to
192 examination under this article. This section shall not be
193 construed to automatically preclude an examiner from being:

194 (A) A viator;

195 (B) An insured in a viaticated insurance policy; or

196 (C) A beneficiary in an insurance policy that is proposed
197 to be viaticated.

198 (2) Notwithstanding the requirements of this clause, the
199 commissioner may retain, from time to time, on an individual
200 basis, qualified actuaries, certified public accountants or
201 other similar individuals who are independently practicing
202 their professions, even though these persons may, from time
203 to time, be similarly employed or retained by persons subject
204 to examination under this article.

205 (f)(1) No cause of action shall arise nor shall any liability
206 be imposed against the commissioner, the commissioner's
207 authorized representatives or any examiner appointed by the
208 commissioner for any statements made or conduct performed
209 in good faith while carrying out the provisions of this article.

210 (2) No cause of action shall arise, nor shall any liability
211 be imposed against any person for the act of communicating
212 or delivering information or data to the commissioner or the
213 commissioner's authorized representative or examiner
214 pursuant to an examination made under this article, if the act
215 of communication or delivery was performed in good faith
216 and without fraudulent intent or the intent to deceive. This
217 subdivision does not abrogate or modify in any way any
218 common law or statutory privilege or immunity heretofore
219 enjoyed by any person identified in subdivision (1) of this
220 subsection.

221 (3) A person identified in subdivision (1) or (2) of this
222 subsection shall be entitled to an award of attorney's fees and
223 costs if he or she is the prevailing party in a civil cause of
224 action for libel, slander or any other relevant tort arising out
225 of activities in carrying out the provisions of this article and
226 the party bringing the action was not substantially justified in
227 doing so. For purposes of this section, a proceeding is
228 "substantially justified" if it had a reasonable basis in law or
229 fact at the time that it was initiated.

230 (g) The insurance fraud unit created in article forty-one
231 of this chapter may investigate suspected violations of this
232 article by persons engaged in the business of viatical
233 settlements in the same manner as the fraud unit investigates
234 suspected violators of those statutes set forth in subsection
235 (b), section eight, article forty-one of this chapter.

§33-13C-8. Disclosure to viator.

1 (a) With each application for a viatical settlement, a
2 viatical settlement provider or viatical settlement broker shall
3 provide the viator with at least the following disclosures no
4 later than the time the application for the viatical settlement
5 contract is signed by all parties. The disclosures shall be
6 provided in a separate document that is signed by the viator
7 and the viatical settlement provider or viatical settlement
8 broker, and shall provide the following information:

9 (1) That there are possible alternatives to viatical
10 settlement contracts, including any accelerated death benefits
11 or policy loans offered under the viator's life insurance
12 policy.

13 (2) That a viatical settlement broker represents
14 exclusively the viator, and not the insurer or the viatical
15 settlement provider, and owes a fiduciary duty to the viator,
16 including a duty to act according to the viator's instructions
17 and in the best interest of the viator.

18 (3) That some or all of the proceeds of the viatical
19 settlement may be taxable under federal income tax and state
20 franchise and income taxes, and assistance should be sought
21 from a professional tax advisor.

22 (4) That proceeds of the viatical settlement could be
23 subject to the claims of creditors.

24 (5) That receipt of the proceeds of a viatical settlement
25 may adversely affect the viator's eligibility for Medicaid or
26 other government benefits or entitlements, and advice should
27 be obtained from the appropriate government agencies.

28 (6) The viator has the right to rescind a viatical settlement
29 contract by providing notice of rescission and repaying all
30 viatical settlement proceeds paid to the viator pursuant to the
31 escrow agreement by the earlier of sixty calendar days after
32 the date upon which the viatical settlement contract is
33 executed by all parties or thirty calendar days after the
34 viatical settlement proceeds have been paid to the viator, as
35 provided in subsection (e), section ten of this article. If the
36 insured dies during the rescission period, the viatical
37 settlement contract shall be deemed to have been rescinded,
38 subject to repayment by the viator or the viator's estate of all
39 viatical settlement proceeds to the viatical settlement provider
40 within sixty days of the insured's death.

41 (7) That funds will be sent to the viator within three
42 business days after the viatical settlement provider has
43 received the insurer or group administrator's written
44 acknowledgment that ownership of the policy or interest in
45 the certificate has been transferred and the beneficiary has
46 been designated.

47 (8) That entering into a viatical settlement contract may
48 cause other rights or benefits, including conversion rights and
49 waiver of premium benefits that may exist under the policy

50 or certificate, to be forfeited by the viator and that assistance
51 should be sought from a financial adviser.

52 (9) Disclosure to a viator shall include distribution of a
53 brochure prescribed by the commissioner describing the
54 process of viatical settlements.

55 (10) The disclosure document shall contain the following
56 language: "All medical, financial or personal information
57 solicited or obtained by a viatical settlement provider or
58 viatical settlement broker about an insured, including the
59 insured's identity or the identity of family members, a spouse
60 or a significant other may be disclosed as necessary to effect
61 the viatical settlement between the viator and the viatical
62 settlement provider. If you are asked to provide this
63 information, you will be asked to consent to the disclosure.
64 The information may be provided to someone who buys the
65 policy or provides funds for the purchase. You may be asked
66 to renew your permission to share information every two
67 years."

68 (11) That following execution of a viatical contract, the
69 insured may be contacted for the purpose of determining the
70 insured's health status and to confirm the insured's
71 residential or business street address and telephone number
72 or as otherwise provided in this article. This contact shall be
73 limited to once every three months if the insured has a life
74 expectancy of more than one year, and not more than once
75 per month if the insured has a life expectancy of one year or
76 less. All such contracts shall be made only by a viatical
77 settlement provider licensed in the state in which the viator
78 resided at the time of the viatical settlement, or by the
79 authorized representative of a duly licensed viatical
80 settlement provider.

81 (b) A viatical settlement provider shall provide the viator
82 with at least the following disclosures no later than the date

83 the viatical settlement contract is signed by all parties. The
84 disclosures shall be conspicuously displayed in the viatical
85 settlement contract or in a separate document signed by the
86 viator and provide the following information:

87 (1) The affiliation, if any, between the viatical settlement
88 provider and the issuer of the insurance policy to be
89 viaticated;

90 (2) The document shall include the name, business
91 address and telephone number of the viatical settlement
92 provider;

93 (3) Any affiliations or contractual arrangements between
94 the viatical settlement provider and the viatical settlement
95 purchaser;

96 (4) If an insurance policy to be viaticated has been issued
97 as a point policy or involved family riders or any coverage of
98 a life other than the insured under the policy to be viaticated,
99 the viator shall be informed of the possible loss of coverage
100 on the other lives under the policy and shall be advised to
101 consult with his or her insurance producer or the insurer
102 issuing the policy for advice on the proposed viatical
103 settlement;

104 (5) State the dollar amount of the current death benefit
105 payable to the viatical settlement provider under the policy or
106 certificate. If known, the viatical settlement provider shall
107 also disclose the availability of any additional guaranteed
108 insurance benefits, the dollar amount of any accidental death
109 and dismemberment benefits under the policy or certificate
110 and the extent to which the viator's interest in those benefits
111 will be transferred as a result of the viatical settlement
112 contract; and

113 (6) State whether the funds will be escrowed with an
114 independent third party during the transfer process and, if so,

115 provide the name, business address and telephone number of
116 the independent third-party escrow agent, and the fact that the
117 viator or owner may inspect or receive copies of the relevant
118 escrow or trust agreements or documents.

119 (c) A viatical settlement broker shall provide the viator
120 with at least the following disclosures no later than the date
121 the viatical settlement contract is signed by all parties. The
122 disclosures shall be conspicuously displayed in the viatical
123 settlement contract or in a separate document signed by the
124 viator and provide the following information:

125 (1) The name, business address and telephone number of
126 the viatical settlement broker;

127 (2) A full, complete and accurate description of all offers,
128 counter-offers, acceptances and rejections relating to the
129 proposed viatical settlement contract;

130 (3) A written disclosure of any affiliations or contractual
131 arrangements between the viatical settlement broker and any
132 person making an offer in connection with the proposed
133 viatical settlement contracts;

134 (4) The amount and method of calculating the broker's
135 compensation, which term "compensation" includes anything
136 of value paid or given to a viatical settlement broker for the
137 placement of a policy; and

138 (5) Where any portion of the viatical settlement broker's
139 compensation, as defined in subdivision (4) of this
140 subsection, is taken from a proposed viatical settlement offer,
141 the broker shall disclose the total amount of the viatical
142 settlement offer and the percentage of the viatical settlement
143 offer comprised by the viatical settlement broker's
144 compensation.

145 (d) If the viatical settlement provider transfers ownership
146 or changes the beneficiary of the insurance policy, the
147 provider shall communicate in writing the change in
148 ownership or beneficiary to the insured within twenty days
149 after the change.

§33-13C-9. Disclosure to insurer.

1 Before the initiation of a plan, transaction or series of
2 transactions, a viatical settlement broker or viatical settlement
3 provider shall fully disclose to an insurer a plan, transaction
4 or series of transactions, to which the viatical settlement
5 broker or viatical settlement provider is a part, to originate,
6 renew, continue or finance a life insurance policy with the
7 insurer for the purpose of engaging in the business of viatical
8 settlements at anytime prior to, or during the first five years
9 after, issuance of the policy.

§33-13C-10. General rules.

1 (a)(1) A viatical settlement provider entering into a
2 viatical settlement contract shall first obtain:

3 (A) If the viator is the insured, a written statement from
4 a licensed attending physician that the viator is of sound mind
5 and under no constraint or undue influence to enter into a
6 viatical settlement contract; and

7 (B) A document in which the insured consents to the
8 release of his or her medical records to a licensed viatical
9 settlement provider, viatical settlement broker and the
10 insurance company that issued the life insurance policy
11 covering the life of the insured.

12 (2) Within twenty days after a viator executes documents
13 necessary to transfer any rights under an insurance policy or
14 within twenty days of entering any agreement, option,

15 promise or any other form of understanding, expressed or
16 implied, to viaticate the policy, the viatical settlement
17 provider shall give written notice to the insurer that issued
18 that insurance policy that the policy has or will become a
19 viaticated policy. The notice shall be accompanied by the
20 documents required by subdivision (3) of this subsection.

21 (3) The viatical provider shall deliver a copy of the
22 medical release required under paragraph (B), subdivision (1)
23 of this subsection, a copy of the viator's application for the
24 viatical settlement contract, the notice required under
25 subdivision (2) of this subsection and a request for
26 verification of coverage to the insurer that issued the life
27 insurance policy that is the subject of the viatical transaction.
28 The request for verification of coverage shall be on a form
29 prescribed by the commissioner.

30 (4) The insurer shall respond to a request for verification
31 of coverage within thirty calendar days of the date the request
32 is received and shall indicate whether, based on the medical
33 evidence and documents provided, the insurer intends to
34 pursue an investigation at this time regarding the validity of
35 the insurance contract or possible fraud. The insurer shall
36 accept a request for verification made on an approved form
37 or any facsimile or electronic copy of such request and any
38 accompanying authorization signed by the viator. Failure by
39 the insurer to meet its obligations under this subsection shall
40 be a violation of subsection (c), section eleven of this article
41 and section sixteen of this article.

42 (5) Prior to or at the time of execution of the viatical
43 settlement contract, the viatical settlement provider shall
44 obtain a witnessed document in which the viator consents to
45 the viatical settlement contract, represents that the viator has
46 a full understanding of the viatical settlement contract, that he
47 or she has a full understanding of the benefits of the life
48 insurance policy, acknowledges that he or she is entering into

49 the viatical settlement contract freely and voluntarily and, for
50 persons with a terminal or chronic illness or condition,
51 acknowledges that the insured has a terminal or chronic
52 illness and that the terminal or chronic illness or condition
53 was diagnosed after the life insurance policy was issued.

54 (6) If a viatical settlement broker performs any of these
55 activities required of the viatical settlement provider, the
56 provider is deemed to have fulfilled the requirements of this
57 section.

58 (b) All medical information solicited or obtained by any
59 licensee shall be subject to the applicable provisions of state
60 law relating to confidentiality of medical information.

61 (c) All viatical settlement contracts entered into in this
62 state shall provide the viator with an absolute right to rescind
63 the contract before the earlier of sixty calendar days after the
64 date upon which the viatical settlement contract is executed
65 by all parties or thirty calendar days after the viatical
66 settlement proceeds have been sent to the viator as provided
67 in subsection (e) of this section. Rescission by the viator
68 may be conditioned upon the viator both giving notice and
69 repaying to the viatical settlement provider within the
70 rescission period all proceeds of the settlement and any
71 premiums, loans and loan interest paid by or on behalf of the
72 viatical settlement provider in connection with or as a result
73 of the viatical settlement. If the insured dies during the
74 rescission period, the viatical settlement contract shall be
75 deemed to have been rescinded, subject to repayment to the
76 viatical settlement provider or purchaser of all viatical
77 settlement proceeds, any premiums, loans and loan interest
78 that have been paid by the viatical settlement provider or
79 purchaser, which shall be paid within sixty calendar days of
80 the death of the insured. In the event of any rescission, if the
81 viatical settlement provider has paid commissions or other
82 compensation to a viatical settlement broker in connection

83 with the rescinded transaction, the viatical settlement broker
84 shall refund all such commissions and compensation to the
85 viatical settlement provider within five business days
86 following receipt of written demand from the viatical
87 settlement provider, which demand shall be accompanied by
88 either the viator's notice of rescission if rescinded at the
89 election of the viator, or notice of the death of the insured if
90 rescinded by reason of the death of the insured within the
91 applicable rescission period.

92 (d) The viatical settlement provider shall instruct the
93 viator to send the executed documents required to effect the
94 change in ownership, assignment or change in beneficiary
95 directly to the independent escrow agent. Within three
96 business days after the escrow agent receives the document
97 or, if the viator erroneously provides the documents directly
98 to the provider, after the viatical settlement provider receives
99 the documents, the provider shall pay or transfer the proceeds
100 of the viatical settlement into an escrow or trust account
101 maintained in a state or federally chartered financial institution
102 whose deposits are insured by the Federal Deposit Insurance
103 Corporation (FDIC). Upon payment of the settlement
104 proceeds into the escrow account, the escrow agent shall
105 deliver the original change in ownership assignment or
106 change in beneficiary forms to the viatical settlement
107 provider or related provider trust or other designated
108 representative of the viatical settlement provider. Upon the
109 escrow agent's receipt of the acknowledgment of the properly
110 completed transfer of ownership, assignment or designation
111 of beneficiary from the insurance company, the escrow agent
112 shall pay the settlement proceeds to the viator.

113 (e) Failure to tender consideration to the viator for the
114 viatical settlement contract within the time set forth in the
115 disclosure pursuant to subdivision (7), subsection (a), section
116 eight of this article renders the viatical settlement contract
117 voidable by the viator for lack of consideration until the time

118 consideration is tendered to and accepted by the viator.
119 Funds shall be deemed sent by a viatical settlement provider
120 to a viator as of the date that the escrow agent either releases
121 funds for wire transfer to the viator or places a check for
122 delivery to the viator via United State Postal Service or other
123 nationally recognized delivery service.

124 (f) Contacts with the insured for the purpose of
125 determining the health status of the insured by the viatical
126 settlement provider or viatical settlement broker after the
127 viatical settlement has occurred shall only be made by the
128 viatical settlement provider or broker licensed in this state or
129 its authorized representatives and shall be limited to once
130 every three months for insureds with a life expectancy of
131 more than one year, and to no more than once per month for
132 insureds with a life expectancy of one year or less. The
133 provider or broker shall explain the procedure for these
134 contacts at the time the viatical settlement contract is entered
135 into. The limitations set forth in this subsection shall not
136 apply to any contacts with an insured for reasons other than
137 determining the insured's health status. Viatical settlement
138 providers and viatical settlement brokers shall be responsible
139 for the actions of their authorized representatives.

§33-13C-11. Prohibited practices.

1 (a) It is a violation of this article for any person to enter
2 into a viatical settlement contract at any time prior to the
3 application for or issuance of a policy that is the subject of a
4 viatical settlement contract or within a five-year period
5 commencing with the date of issuance of the insurance policy
6 or certificate unless the viator certifies to the viatical
7 settlement provider that one or more of the following
8 conditions have been met within the five-year period after
9 issuance of the policy or certificate:

10 (1) The policy was issued upon the viator's exercise of
11 conversion rights arising out of a group or individual policy,

12 provided the total of the time covered under the conversion
13 policy plus the time covered under the prior policy is at least
14 sixty (60) months. The time covered under a group policy
15 shall be computed without regard to any change in insurance
16 carriers, provided the coverage has been continuous and
17 under the same group sponsorship;

18 (2) The viator certifies and submits independent evidence
19 to the viatical settlement provider that one or more of the
20 following conditions have been met within that five-year
21 period:

22 (A) The viator or insured is terminally or chronically ill;

23 (B) The viator's spouse dies;

24 (C) The viator divorces his or her spouse;

25 (D) The viator retires from full-time employment;

26 (E) The viator becomes physically or mentally disabled
27 and a physician determines that the disability prevents the
28 viator from maintaining full-time employment; or

29 (F) A court of competent jurisdiction enters a final order,
30 judgment or decree on the application of a creditor of the
31 viator and adjudicates the viator bankrupt or insolvent or
32 approves a petition seeking reorganization of the viator or
33 appoints a receiver, trustee or liquidator to all or a substantial
34 part of the viator's assets; or

35 (3) The viator enters into a viatical settlement contract
36 more than two years after the date of issuance of a policy
37 and, at all times during that two-year period, all of the
38 following conditions are true with respect to the policy;

39 (A) Policy premiums have been funded exclusively with
40 unencumbered assets, including an interest in the life

41 insurance policy being financed only to the extent of its net
42 cash surrender value, provided by, or fully recourse liability
43 incurred by, the insured on a person described in
44 subparagraph (iv), paragraph (C), subdivision (13), section
45 two of this article;

46 (B) There is no agreement or understanding with any
47 other person to guarantee any such liability or to purchase, or
48 stand ready to purchase, the policy, including through an
49 assumption or forgiveness of the loan; and

50 (C) Neither the insured nor the policy has been evaluated
51 for settlement.

52 (b) Copies of the independent evidence described in
53 subdivision (2), subsection (a) of this section and documents
54 required by subsection (a), section ten of this article shall be
55 submitted to the insurer when the viatical settlement provider
56 or other party entering into a viatical settlement contract with
57 a viator submits a request to the insurer for verification of
58 coverage. The copies shall be accompanied by a letter of
59 attestation from the viatical settlement provider that the
60 copies are true and correct copies of the documents received
61 by the viatical settlement provider.

62 (c) If the viatical settlement provider submits to the
63 insurer a copy of the owner or insured's certification
64 described in and the independent evidence required by
65 subdivision (2), subsection (a) of this section when the
66 provider submits a request to the insurer to effect the transfer
67 of the policy or certificate to the viatical settlement provider,
68 the copy shall be deemed to conclusively establish that the
69 viatical settlement contract satisfies the requirements of this
70 section and the insurer shall timely respond to the request.

71 (d) No insurer may, as a condition of responding to a
72 request for verification of coverage or effecting the transfer
73 of a policy pursuant to a viatical settlement contract, require

74 that the viator, insured, viatical settlement provider or viatical
75 settlement broker sign any forms, disclosures, consent or
76 waiver form that has not been expressly approved by the
77 commissioner for use in connection with viatical settlement
78 contracts in this state.

79 (e) Upon receipt of a properly completed request for
80 change of ownership or beneficiary of a policy, the insurer
81 shall respond in writing within thirty calendar days with
82 written acknowledgment confirming that the change has been
83 effected or specifying the reasons why the request change
84 cannot be processed. The insurer shall not unreasonably
85 delay effecting change of ownership or beneficiary and shall
86 not otherwise seek to interfere with any viatical settlement
87 contract lawfully entered into in this state.

§33-13C-12. Prohibited practices and conflicts of interest.

1 (a) With respect to any viatical settlement contract or
2 insurance policy, no viatical settlement broker knowingly
3 shall solicit an offer from, effectuate a viatical settlement
4 with or make a sale to any viatical settlement provider,
5 viatical settlement purchaser, financing entity or related
6 provider trust that is controlling, controlled by or under
7 common control with such viatical settlement broker.

8 (b) With respect to any viatical settlement contract or
9 insurance policy, no viatical settlement provider knowingly
10 may enter into a viatical settlement contract with a viator, if,
11 in connection with such viatical settlement contract, anything
12 of value will be paid to a viatical settlement broker that is
13 controlling, controlled by or under common control with such
14 viatical settlement provider or the viatical settlement
15 purchaser, financing entity or related provider trust that is
16 involved in such viatical settlement contract.

17 (c) A violation of subsection (a) or (b) of this section
18 shall be deemed a fraudulent viatical settlement act.

19 (d) No viatical settlement provider shall enter into a
20 viatical settlement contract unless the viatical settlement
21 promotional, advertising and marketing materials, as may be
22 prescribed by rule, have been filed with the commissioner.
23 In no event shall any marketing materials expressly reference
24 that the insurance is “free” for any period of time. The
25 inclusion of any reference in the marketing materials that
26 would cause a viator to reasonably believe that the insurance
27 is free for any period of time shall be considered a violation
28 of this article.

29 (e) No life insurance producer, insurance company,
30 viatical settlement broker or viatical settlement provider shall
31 make any statement or representation to the applicant or
32 policyholder in connection with the sale or financing of a life
33 insurance policy to the effect that the insurance is free or
34 without cost to the policyholder for any period of time unless
35 provided in the policy.

§33-13C-13. Advertising for viatical settlements.

1 (a) The purpose of this section is to provide prospective
2 viators with clear and unambiguous statements in the
3 advertisement of viatical settlements and to assure the clear,
4 truthful and adequate disclosure of the benefits, risks,
5 limitations and exclusions of any viatical settlement contract.
6 This purpose is intended to be accomplished by the
7 establishment of guidelines and standards of permissible and
8 impermissible conduct in the advertising of viatical
9 settlements to assure that product descriptions are presented
10 in a manner that prevents unfair, deceptive or misleading
11 advertising and is conducive to accurate presentation and
12 description of viatical settlements through the advertising
13 media and material used by viatical settlement licensees.

14 (b) This section shall apply to any advertising of viatical
15 settlement contracts or related products or services intended
16 for dissemination in this state, including internet advertising

17 viewed by persons located in this state. Where disclosure
18 requirements are established pursuant to federal regulation,
19 this section shall be interpreted so as to minimize or eliminate
20 conflict with federal regulation wherever possible.

21 (c) Every viatical settlement licensee shall establish and
22 at all times maintain a system of control over the content,
23 form and method of dissemination of all advertisements of its
24 contracts, products and services. All advertisements,
25 regardless of by whom written, created, designed or
26 presented, shall be the responsibility of the viatical settlement
27 licensees, as well as the individual who created or presented
28 the advertisement. A system of control shall include regular
29 routine notification, at least once a year, to agents and others
30 authorized by the viatical settlement licensee who
31 disseminates advertisements of the requirements and
32 procedures for approval prior to the use of any
33 advertisements not furnished by the viatical settlement
34 license.

35 (d) Advertisements shall be truthful and not misleading
36 in fact or by implication. The form and content of an
37 advertisement of a viatical settlement contract shall be
38 sufficiently complete and clear so as to avoid deception. It
39 shall not have the capacity or tendency to mislead or deceive.
40 Whether an advertisement has the capacity or tendency to
41 mislead or deceive shall be determined by the commissioner
42 from the overall impression that the advertisement may be
43 reasonably expected to create upon a person of average
44 education or intelligence within the segment of the public to
45 which it is directed.

46 (e) The information required to be disclosed under this
47 section shall not be minimized, rendered obscure, or
48 presented in an ambiguous fashion or intermingled with the
49 text of the advertisement so as to be confusing or misleading.

50 (1) An advertisement shall not omit material information
51 or use words, phrases, statements, references or illustrations
52 if the omission or use has the capacity, tendency or effect of
53 misleading or deceiving viators as to the nature or extent of
54 any benefit, loss covered, premium payable or state or federal
55 tax consequence. The fact that the viatical settlement
56 contract offered is made available for inspection prior to
57 consummation of the sale, or an offer is made to refund the
58 payment if the viator is not satisfied or that the viatical
59 settlement contract includes a “free look” period that satisfies
60 or exceeds legal requirements, does not remedy misleading
61 statements.

62 (2) An advertisement shall not use the name or title of a
63 life insurance company or a life insurance policy unless the
64 advertisement has been approved by the insurer.

65 (3) An advertisement shall not state or imply that interest
66 charged on an accelerated death benefit or a policy loan is
67 unfair, inequitable or in any manner an incorrect or improper
68 practice.

69 (4) The words “free”, “no cost”, “without cost”, “no
70 additional cost”, “at no extra cost” or words of similar import
71 shall not be used with respect to any benefit or service unless
72 true. An advertisement may specify the charge for a benefit
73 or a service or may state that a charge is included in the
74 payment or use other appropriate language.

75 (5) Testimonials, appraisals or analysis used in
76 advertisements must be genuine; represent the current
77 opinion of the author; be applicable to the viatical settlement
78 contract product or service advertised, if any; and be
79 accurately reproduced with sufficient completeness to avoid
80 misleading or deceiving prospective viators as to the nature
81 or scope of the testimonials, appraisals or analysis, a licensee
82 under this article makes as its own all the statements

83 contained therein, and the statements are subject to all the
84 provisions of this section.

85 (A) If the individual making a testimonial, appraisal,
86 analysis or an endorsement has a financial interest in the
87 party making use of the testimonial, appraisal, analysis or
88 endorsement, either directly or through a related entity as a
89 stockholder, director, officer, employee or otherwise, or
90 receives any benefit directly or indirectly other than required
91 union scale wages, that fact shall be prominently disclosed in
92 the advertisement.

93 (B) An advertisement shall not state or imply that a
94 viatical settlement contract benefit or service has been
95 approved or endorsed by a group of individuals, society,
96 association or other organization unless that is the fact and
97 unless any relationship between an organization and the
98 viatical settlement licensee is disclosed. If the entity making
99 the endorsement or testimonial is owned, controlled or
100 managed by the viatical settlement licensee, or receives any
101 payment or other consideration from the viatical settlement
102 licensee for making an endorsement or testimonial, the fact
103 shall be disclosed in the advertisement.

104 (C) When an endorsement refers to benefits received
105 under a viatical settlement contract all pertinent information
106 shall be retained for a period of five years after its use.

107 (f) An advertisement shall not contain statistical
108 information unless it accurately reflects recent and relevant
109 facts. The course of all statistics used in an advertisement
110 shall be identified.

111 (g) An advertisement shall not disparage insurers, viatical
112 settlement providers, viatical settlement brokers, viatical
113 settlement investment agents, insurance producers, policies,
114 services or methods of marketing.

115 (h) The name of the viatical settlement licensee shall be
116 clearly identified in all advertisements about the licensee or
117 its viatical settlement contract, products or services, and if
118 any specific viatical settlement contract is advertised, the
119 viatical settlement contract shall be identified either by form
120 number or some other appropriate description. If an
121 application is part of the advertisement, the name of the
122 viatical settlement provider shall be shown on the
123 application.

124 (i) An advertisement shall not use a trade name, group
125 designation, name of the parent company of a viatical
126 settlement licensee, name of a particular division of the
127 viatical settlement licensee, service mark, slogan, symbol or
128 other device or reference without disclosing the name of the
129 viatical settlement licensee, if the advertisement would have
130 the capacity or tendency to mislead or deceive as to the true
131 identity of the viatical settlement licensee, or to create the
132 impression that a company other than the viatical settlement
133 licensee would have any responsibility for the financial
134 obligation under a viatical settlement contract.

135 (j) An advertisement shall not use any combination of
136 words, symbols or physical materials that by their content,
137 phraseology, shape, color or other characteristics are so
138 similar to a combination of words, symbols or physical
139 materials used by a government program or agency or
140 otherwise appear to be of such a nature that they tend to
141 mislead prospective viators into believing that the solicitation
142 is in some manner connected with a government program or
143 agency.

144 (k) An advertisement may state that a viatical settlement
145 licensee is licensed in the state where the advertisement
146 appears, provided it does not exaggerate that fact or suggest
147 or imply that competing viatical settlement licensees may not
148 be so licensed. The advertisement may ask the audience to

149 consult the licensee's website or contact the department of
150 insurance to find out if the state requires licensing and, if so,
151 whether the viatical settlement provider or viatical settlement
152 broker is licensed.

153 (l) An advertisement shall not create the impression that
154 the viatical settlement provider, its financial condition or
155 status, the payment of its claims or the merits, desirability, or
156 advisability of its viatical settlement contracts are
157 recommended or endorsed by any government entity.

158 (m) The name of the actual licensee shall be stated in all
159 of its advertisements. An advertisement shall not use a trade
160 name, any group designation, name of any affiliate or
161 controlling entity of the licensee, service mark, slogan,
162 symbol or other device in a manner that would have the
163 capacity or tendency to mislead or deceive as to the true
164 identity of the actual licensee or create the false impression
165 that an affiliate or controlling entity would have any
166 responsibility for the financial obligation of the licensee.

167 (n) An advertisement shall not, directly or indirectly,
168 create the impression that any division or agency of the state
169 or of the United States government endorses, approves or
170 favors:

171 (1) Any viatical settlement licensee or its business
172 practices or methods of operation;

173 (2) The merits, desirability or advisability of any viatical
174 settlement contract;

175 (3) Any viatical settlement contract; or

176 (4) Any life insurance policy or life insurance company.

177 (o) If the advertiser emphasizes the speed with which the
178 viatication will occur, the advertising must disclose the

179 average time frame from completed application to the date of
180 offer and from acceptance of the offer to receipt of the funds
181 by the viator.

182 (p) If the advertising emphasizes the dollar amounts
183 available to viators, the advertising shall disclose the average
184 purchase price as a percent of face value obtained by viators
185 contracting with the licensee during the past six months.

§33-13C-14. Fraud prevention and control.

1 (a) *Fraudulent viatical settlement acts, interference and*
2 *participation of convicted felons prohibited.* --

3 (1) A person shall not commit a fraudulent viatical
4 settlement act.

5 (2) A person shall not knowingly or intentionally
6 interfere with the enforcement of the provisions of this article
7 or investigations of suspected or actual violations of this
8 article.

9 (3) A person in the business of viatical settlements shall
10 not knowingly or intentionally permit any person convicted
11 of a felony involving dishonesty or breach of trust to
12 participate in the business of viatical settlements.

13 (b) *Fraud warning required.* --

14 (1) Viatical settlement contracts and applications for
15 viatical settlements, regardless of the form of transmission
16 shall contain the following statement or a substantially
17 similar statement:

18 “Any person who knowingly presents false information
19 in an application for insurance or viatical settlement contract
20 is guilty of a crime and may be subject to fines and
21 confinement in prison.”

22 (2) The lack of a statement as required in subdivision (1)
23 of this subsection does not constitute a defense in any
24 prosecution for a fraudulent viatical settlement act.

25 (c) (1) Any person engaged in the business of viatical
26 settlements having knowledge or a reasonable suspicion that
27 a fraudulent viatical settlement act is being, will be or has
28 been committed shall provide such information to the
29 commissioner.

30 (2) Any other person having knowledge or a reasonable
31 belief that a fraudulent viatical settlement act is being, will be
32 or has been committed may provide to the commissioner the
33 information required by, and in a manner prescribed by, the
34 commissioner.

35 (d) (1) No civil liability shall be imposed on and no cause
36 of action shall arise from a person's furnishing information
37 concerning suspected, anticipated or completed fraudulent
38 viatical settlement acts or suspected or completed fraudulent
39 insurance acts if the information is provided without actual
40 malice and is provided to or received from:

41 (A) The commissioner or the commissioner's employees,
42 agents or representatives;

43 (B) Federal, state or local law enforcement or regulatory
44 officials or their employees, agents or representatives;

45 (C) A person involved in the prevention and detection of
46 fraudulent viatical settlement acts or that person's agents,
47 employees or representatives;

48 (D) The National Association of Insurance
49 Commissioners (NAIC), National Association of Securities
50 Dealers (NASD), the North American Securities
51 Administrators Association (NASAA), or their employees,
52 agents or representatives, or other regulatory body overseeing

53 life insurance, viatical settlements, securities or investment
54 fraud; or

55 (E) The life insurer that issued the life insurance policy
56 covering the life of the insured.

57 (2) A person furnishing information pursuant to
58 subdivision (1) of this subsection shall be entitled to an award
59 of attorney's fees and costs if he or she is the prevailing party
60 in a civil cause of action for libel, slander or any other
61 relevant tort arising out of activities in carrying out the
62 provisions of this article and the party bringing the action was
63 not substantially justified in doing so.

64 (3) This subsection does not abrogate or modify common
65 law or statutory privileges or immunities enjoyed by a person
66 described in subdivision (1) of this subsection.

67 (e) (1) Documents and evidence provided pursuant to
68 subsection (d) of this section or obtained by the
69 commissioner in an investigation of suspected or actual
70 fraudulent viatical settlement acts shall be privileged and
71 confidential and shall not be a public record and shall not be
72 subject to discovery or subpoena in a civil or criminal action.

73 (2) The commissioner may release documents and
74 evidence obtained in an investigation of suspected or actual
75 fraudulent viatical settlement acts in administrative or judicial
76 proceedings to enforce laws administered by the
77 commissioner; to federal, state or local law enforcement or
78 regulatory agencies, to an organization established for the
79 purpose of detecting and preventing fraudulent viatical
80 settlement acts or to the NAIC; or, at the discretion of the
81 commissioner, to a person in the business of viatical
82 settlements that is aggrieved by a fraudulent viatical
83 settlement act: *Provided*, That release of documents and
84 evidence under this subdivision does not abrogate or modify
85 the privilege granted in subdivision (1) of this subsection.

86 (f) This section does not:

87 (1) Preempt the authority or relieve the duty of other law
88 enforcement or regulatory agencies to investigate, examine
89 and prosecute suspected violations of law;

90 (2) Prevent or prohibit a person from disclosing
91 voluntarily information concerning viatical settlement fraud
92 to a law enforcement or regulatory agency other than the
93 insurance department; or

94 (3) Limit the powers granted elsewhere by the laws of
95 this state to the commissioner or an insurance fraud unit to
96 investigate and examine possible violations of law and to
97 take appropriate action against wrongdoers.

98 (g) (1) Viatical settlement providers and viatical
99 settlement brokers shall have in place antifraud initiatives
100 reasonably computed to detect, prosecute and prevent
101 fraudulent viatical settlement acts. At the discretion of the
102 commissioner, the commissioner may order, or a licensee
103 may request and the commissioner may grant, such
104 modifications of the following required initiatives as
105 necessary to ensure an effective antifraud program. The
106 modifications may be more or less restrictive than the
107 required initiatives so long as the modifications may
108 reasonably be expected to accomplish the purpose of this
109 section.

110 (2) Antifraud initiatives shall include:

111 (A) Fraud investigators who may be viatical settlement
112 provider or viatical settlement broker employees or
113 independent contractors; and

114 (B) An antifraud plan, which shall be submitted to the
115 commissioner. The antifraud plan shall include, but not be
116 limited to:

117 (i) A description of the procedures for detecting and
118 investigating possible fraudulent viatical settlement acts and
119 procedures for resolving material inconsistencies between
120 medical records and insurance applications;

121 (ii) A description of the procedures for reporting possible
122 fraudulent viatical settlement acts to the commissioner;

123 (iii) A description of the plan for antifraud education and
124 training of underwriters and other personnel; and

125 (iv) A description or chart outlining the organization
126 arrangement of the antifraud personnel who are responsible
127 for the investigation and reporting of possible fraudulent
128 viatical settlement acts and investigating unresolved material
129 inconsistencies between medical records and insurance
130 applications.

131 (3) Antifraud plans submitted to the commissioner shall
132 be privileged and confidential and shall not be a public record
133 and shall not be subject to discovery or subpoena in a civil or
134 criminal action.

§33-13C-15. Injunctions; civil remedies; cease and desist.

1 (a) In addition to the penalties and other enforcement
2 provisions of this chapter, if any person violates any
3 provision of this article or of any rule implementing this
4 article, the commissioner may seek an injunction in a court of
5 competent jurisdiction and may apply for temporary and
6 permanent orders that the commissioner determines are
7 necessary to restrain the person from committing the
8 violation.

9 (b) Any person damaged by the acts of a person in
10 violation of this article may bring a civil action against the
11 person committing the violation in a court of competent
12 jurisdiction.

13 (c) The commissioner may issue cease and desist order
14 upon a person that violates any provision of this article or any
15 rule promulgated thereunder, any order adopted by the
16 commissioner, or any written agreement entered into with the
17 commissioner.

18 (d) When the commissioner finds that an activity in
19 violation of this article presents an immediate danger to the
20 public that requires an immediate final order, the
21 commissioner may issue an emergency cease and desist order
22 reciting with particularity the facts underlying the findings.
23 The emergency cease and desist order is effective
24 immediately upon service of a copy of the order on the
25 respondent and remains effective for ninety days. If the
26 commissioner begins nonemergency cease and desist
27 proceedings, the emergency cease and desist order remains
28 effective, absent an order by a court of competent jurisdiction
29 pursuant to this chapter.

30 (e) In addition to the penalties and other enforcement
31 provisions of this article, any person who violates this article
32 is subject to civil penalties of up to ten thousand dollars per
33 violation. Imposition of civil penalties shall be pursuant to
34 an order of the commissioner issued after notice and hearing.
35 The commissioner's order may require a person found to be
36 in violation of this article to make restitution to persons
37 aggrieved by violations of this article.

§33-13C-16. Criminal penalties.

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

4 (1) Imprisonment in a state correctional facility for not
5 more than twenty years or payment of a fine of not more than
6 one hundred thousand dollars, or both, if the value of the

7 viatical settlement contract is more than thirty-five thousand
8 dollars;

9 (2) Imprisonment in a state correctional facility for not
10 more than ten years or to payment of a fine of not more than
11 twenty thousand dollars, or both if the value of the viatical
12 settlement contract is more than two thousand five hundred
13 dollars, but not more than thirty-five thousand dollars;

14 (3) Imprisonment in a state correctional facility for not
15 more than five years or payment of a fine of not more than
16 ten thousand dollars, or both, if the value of the viatical
17 settlement contract is more than five hundred dollars, but not
18 more than two thousand five hundred dollars.

19 (b) Any person who violates any other provision of this
20 article is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined not more than one thousand dollars or
22 confined in jail not more than one year, or both fined and
23 imprisoned.

§33-13C-17. Authority to promulgate rules.

1 The commissioner shall have the authority to promulgate
2 legislative rules, including emergency rules, implementing
3 this article, pursuant to article three, chapter twenty-nine-a of
4 this code. Such rules may include standards for evaluating
5 reasonableness of payments under viatical settlement
6 contracts for persons who are terminally or chronically ill;
7 regulation of discount rates used to determine the amount
8 paid in exchange for assignment, transfer, sale, devise or
9 bequest of a benefit under a life insurance policy insuring the
10 life of a person that is chronically or terminally ill; and
11 provisions governing the relationship and responsibilities of
12 both insurers and viatical settlement providers and viatical
13 settlement brokers during the viatication of a life insurance
14 policy or certificate.

§33-13C-18. No preemption of securities laws.

1 This article shall not preempt, supersede or limit any
2 provision of any state securities law or any rule, order or
3 notice issued thereunder.

CHAPTER 125

**(Com. Sub. for H.B. 4404 - By Delegates Kominar, Webster, Mahan,
Klempa, Cann, White, Long, Crosier, Williams and Ashley)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-15E-1, §33-15E-2, §33-15E-3, §33-15E-4, §33-15E-5, §33-15E-6, §33-15E-7, §33-15E-8, §33-15E-9, §33-15E-10, §33-15E-11, §33-15E-12, §33-15E-13, §33-15E-14, §33-15E-15, §33-15E-16 and §33-15E-17, all relating to licensing and regulating discount medical plan organizations and discount prescription drug plan organizations; requiring payment of fees; authorizing proposal of and promulgation of rules, including emergency rules; and providing civil and criminal penalties for violations.

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 §33-15E-1, §33-15E-2, §33-15E-3, §33-15E-4, §33-15E-5, §33-15E-6, §33-15E-7, §33-15E-8, §33-15E-9, §33-15E-10, §33-15E-11, §33-15E-12, §33-15E-13, §33-15E-14, §33-15E-15, §33-15E-16 and §33-15E-17, all to read as follows:

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

- §33-15E-1. Short title.
- §33-15E-2. Purpose.
- §33-15E-3. Definitions.
- §33-15E-4. Licensing requirements.
- §33-15E-5. Minimum capital requirements.
- §33-15E-6. Surety bond requirements.
- §33-15E-7. Examinations.
- §33-15E-8. Charges and fees; refund requirements, bundling of services.
- §33-15E-9. Record filing and retention requirements.
- §33-15E-10. Provider agreements; provider listing requirements.
- §33-15E-11. Marketing requirements.
- §33-15E-12. Annual reports.
- §33-15E-13. Discount prescription drug plan organizations.
- §33-15E-14. Administrative enforcement actions, injunctions.
- §33-15E-15. Criminal penalties.
- §33-15E-16. Insurance fraud unit.
- §33-15E-17. Rules.

§33-15E-1. Short title.

- 1 This article shall be cited as the “Discount Medical Plan
- 2 Organizations and Discount Prescription Drug Plan
- 3 Organizations Act.”

§33-15E-2. Purpose.

- 1 The purpose of this article is to establish standards for
- 2 discount medical plan organizations and discount prescription
- 3 drug plan organizations in order to better protect consumers
- 4 from unfair or deceptive marketing, sales and enrollment
- 5 practices and to facilitate consumer understanding of the role
- 6 and function of the organizations in providing access to
- 7 medical or ancillary services.

§33-15E-3. Definitions.

- 1 For purposes of this article:

2 (1) “Affiliate” means a person that directly, or indirectly
3 through one or more intermediaries, controls, is controlled
4 by, or is under common control with, the specified person.

5 (2) “Ancillary services” includes audiology, dental,
6 vision, mental health, substance abuse, chiropractic and
7 podiatry services.

8 (3) “Control” or “controlled by” or “under common
9 control with” has the same meaning ascribed to them in
10 subsection (d), section two, article forty-six of this chapter.

11 (4) “Discount medical plan” means a business
12 arrangement or contract in which a person, in exchange for
13 fees, dues, charges or other consideration, offers access for
14 its plan members to providers of medical or ancillary services
15 and the right to receive discounts on medical or ancillary
16 services provided under the discount medical plan from those
17 providers. “Discount medical plan” does not include any
18 plan that does not charge a membership or other fee to use
19 the plan’s discount medical card.

20 (5) “Discount prescription drug plan” means a business
21 arrangement or contract in which a person, in exchange for
22 fees, dues, charges or other consideration, provides access for
23 its plan members to providers of pharmacy services and the
24 right to receive discounts on pharmacy services provided
25 under the discount prescription drug plan from those
26 providers. “Discount prescription drug plan” does not
27 include:

28 (A) Any plan that does not charge a membership or other
29 fee to use the plan’s discount prescription drug card;

30 (B) A patient access program; or

31 (C) A Medicare prescription drug plan.

32 (6) “Discount medical plan organization” means an entity
33 that contracts with providers, provider networks or other
34 discount medical plan organizations to offer access to
35 medical or ancillary services at a discount to plan members,
36 provides access for discount medical plan members to the
37 services in exchange for fees, dues, charges or other
38 consideration, and determines the charges to plan members.

39 (7) “Discount prescription drug plan organization” means
40 an entity that contracts with providers, pharmacy networks or
41 other discount prescription drug plan organizations to offer
42 access to pharmacy services to plan members at a discount,
43 provides access for discount prescription drug plan members
44 to the services in exchange for fees, dues, charges or other
45 consideration, and determines the charges to plan members.

46 (8) “Facility” means an institution providing medical or
47 ancillary services or a health care setting, including, hospitals
48 or other licensed inpatient centers, ambulatory surgical or
49 treatment centers, skilled nursing centers, residential
50 treatment centers, rehabilitation centers or diagnostic
51 laboratories or imaging centers.

52 (9) “Health care professional” means a physician,
53 pharmacist or other health care practitioner who is licensed
54 to perform specified medical or ancillary services within the
55 scope of his or her license.

56 (10) “Marketer” means a person that markets, promotes,
57 sells or distributes a discount medical plan, including any
58 entity that places its name on and markets or distributes a
59 discount medical plan pursuant to a marketing agreement
60 with a discount medical plan organization.

61 (11) “Medical services” means any maintenance, care of
62 or preventive care for the human body or care, service or
63 treatment of an illness or dysfunction of or injury to the
64 human body, and includes, physician care, inpatient care,

65 hospital surgical services, emergency services, ambulance
66 services, laboratory services and medical equipment and
67 supplies. "Medical services" does not include pharmacy or
68 ancillary services.

69 (12) "Medicare prescription drug plan" means a plan that
70 provides a Medicare Part D prescription drug benefit in
71 accordance with the requirements of the federal Medicare
72 Prescription Drug, Improvement and Modernization Act of
73 2003, Pub. L. 108-173 §101 *et seq.*

74 (13) "Member" means any person who pays fees, dues,
75 charges or other consideration for the right to receive the
76 benefits of a discount medical plan or discount prescription
77 drug plan.

78 (14) "Patient access program" means a voluntary
79 program sponsored by one or more pharmaceutical
80 manufacturers that provides free or discounted health care
81 products directly to low income or uninsured individuals
82 either through a discount card or direct shipment.

83 (15) "Person" means an individual, a corporation, a
84 partnership, a joint venture, a joint stock company, a trust, an
85 unincorporated organization, any similar entity or any
86 combination of the foregoing.

87 (16) "Pharmacy services" includes pharmaceutical
88 supplies and prescription drugs.

89 (17) "Provider" means any health care professional or
90 facility that has contracted, directly or indirectly, with a
91 discount medical plan organization to provide medical or
92 ancillary services to members.

93 (18) "Provider network" means an entity that negotiates
94 directly or indirectly with a discount medical plan

95 organization on behalf of more than one provider to provide
96 medical or ancillary services to members.

§33-15E-4. Licensing requirements.

1 (a) A person is required to obtain a license prior to doing
2 business in this state as a discount medical plan organization.

3 (b) The commissioner shall propose rules for legislative
4 approval in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code, as well as emergency
6 rules in accordance with section fifteen of said article, setting
7 forth the licensing requirements. These rules shall include,
8 at a minimum:

9 (1) All necessary forms and other information considered
10 necessary and required by the commissioner for processing
11 the license application;

12 (2) Applicable fees;

13 (3) Reciprocity requirements;

14 (4) Time frames for the application and approval process;

15 (5) Conditions of approval of the license application or
16 denial of the license;

17 (6) Renewal process;

18 (7) Notice requirements; and

19 (8) Any other provisions considered necessary by the
20 commissioner to effectuate the provisions of this article.

§33-15E-5. Minimum capital requirements.

1 (a) Before the commissioner issues a license to any
2 person required to obtain a license under section four of this
3 article, the person seeking to operate a discount medical plan
4 organization shall demonstrate that it has a positive net worth
5 of at least one hundred fifty thousand dollars.

6 (b) Each discount medical plan organization shall at all
7 times maintain a positive net worth of at least one hundred
8 fifty thousand dollars.

§33-15E-6. Surety bond requirements.

1 Each licensed discount medical plan organization shall
2 maintain in force a surety bond in its own name, in an
3 amount not less than thirty-five thousand dollars, in favor of
4 the commissioner for the benefit of any person who is
5 damaged by any violation of this article. The bond shall
6 cover any violation occurring during the time period during
7 which the bond is in effect and shall be issued by an
8 insurance company licensed to do business in this state. A
9 copy of the bond or a statement identifying the depository,
10 trustee, and account number of the surety account, and
11 thereafter proof of annual renewal of the bond or
12 maintenance of the surety account, shall be filed with the
13 commissioner.

§33-15E-7. Examinations.

1 The commissioner may examine the business and affairs
2 of any discount medical plan organization to protect the
3 interests of the residents of this state based on the following
4 reasons, including complaint indices, recent complaints or
5 information from other states, or as he or she deems
6 necessary. An examination shall be performed in accordance
7 with the provisions of section nine, article two of this chapter,
8 except that a discount medical plan organization that is the
9 subject of the examination shall pay the expenses incurred in
10 conducting the examination. Failure by the discount medical

11 plan organization to pay the expenses is grounds for the
12 refusal to renew, revoke or suspend a license to operate as a
13 discount medical plan organization.

§33-15E-8. Charges and fees; refund requirements; bundling of services.

1 (a) A discount medical plan organization may charge a
2 periodic charge as well as a reasonable one-time processing
3 fee for a discount medical plan.

4 (b)(1) All discount medical plan certificates or other
5 document demonstrating membership in the plan issued to
6 persons in this state shall have a notice, prominently printed
7 on the first page of the document or in a similarly
8 conspicuous manner, stating that the member has the right to
9 cancel his or her membership for any reason within thirty
10 days of its receipt. If a member cancels his or her
11 membership in the discount medical plan organization within
12 the first thirty days after the date of receipt of the written
13 document demonstrating membership, the member shall,
14 upon return of the discount medical plan card to the discount
15 medical plan organization, receive a reimbursement of all
16 periodic charges and the amount of any one-time processing
17 fee that exceeds thirty dollars. Notice of cancellation is
18 deemed given when delivered by hand or deposited in a
19 mailbox, properly addressed and postage prepaid to the
20 mailing address of the discount medical plan organization or
21 e-mailed to the e-mail address of the discount medical plan
22 organization.

23 (2) If the discount medical plan organization cancels a
24 membership for any reason other than nonpayment of
25 charges by the member, the discount medical plan
26 organization shall make a pro rata reimbursement of all
27 periodic charges to the member.

28 (c) When a marketer or discount medical plan
29 organization sells a discount medical plan in conjunction with
30 any other products, the marketer or discount medical plan
31 organization shall:

32 (1) Provide the charges for each discount medical plan in
33 writing to the member; or

34 (2) Reimburse the member for all periodic charges for the
35 discount medical plan and all periodic charges for any other
36 product if the member cancels his or her membership in
37 accordance with subdivision (1), subsection (b) of this
38 section.

39 (d) A health carrier that provides a discount medical plan
40 product that is incidental to the insured product is not subject
41 to this section.

§33-15E-9. Record filing and retention requirements.

1 (a)(1) Upon demand by the commissioner, a discount
2 medical plan organization shall file with the commissioner a
3 list of prospective member fees and charges associated with
4 the discount medical plan.

5 (b) A copy of every form to be used by a discount
6 medical plan organization, including the form for the written
7 document demonstrating membership in the plan and all
8 advertising, marketing materials and brochures, shall be
9 retained by such organization and available for inspection by
10 the commissioner for at least two years from the date on
11 which such form was last used.

§33-15E-10. Provider agreements; provider listing requirements.

1 (a)(1) A discount medical plan organization shall have a
2 written provider agreement with all providers offering

3 medical or ancillary services to its members. The written
4 provider agreement may be entered into directly with the
5 provider or indirectly with a provider network to which the
6 provider belongs.

7 (2) A provider agreement between a discount medical
8 plan organization and a provider shall provide the following:

9 (A) A list of the medical or ancillary services and
10 products to be provided at a discount;

11 (B) The amount or amounts of the discounts or,
12 alternatively, a fee schedule that reflects the provider's
13 discounted rates; and

14 (C) A written document demonstrating that the provider
15 has agreed that it will not charge members more than the
16 discounted rates.

17 (3) A provider agreement between a discount medical
18 plan organization and a provider network shall require that
19 the provider network have written agreements with its
20 providers that:

21 (A) Contain the provisions described in subdivision (2)
22 of this subsection;

23 (B) Authorize the provider network to contract with the
24 discount medical plan organization on behalf of the provider;
25 and

26 (C) Require the provider network to maintain an
27 up-to-date list of its contracted providers and to provide the
28 list on a monthly basis to the discount medical plan
29 organization.

30 (4) A provider agreement between a discount medical
31 plan organization and an entity that contracts with a provider

32 network shall require that the entity, in its contract with the
33 provider network, require the provider network to have
34 written agreements with its providers that comply with
35 subdivision (3) of this subsection.

36 (5) The discount medical plan organization shall maintain
37 a copy of each of its active provider agreements; each such
38 organization shall also retain a copy of every inactive
39 provider agreement for at least two years after the expiration
40 date of each such agreement.

41 (b) Each discount medical plan organization shall
42 maintain on its Internet website page a current list of the
43 names and addresses of the providers with which it has
44 contracted directly or through a provider network; the address
45 of the website shall be prominently displayed on all of the
46 discount medical plan organization's advertisements,
47 marketing materials, brochures and discount medical plan
48 cards.

§33-15E-11. Marketing requirements.

1 (a) A discount medical plan organization may market
2 directly or contract with other marketers for the distribution
3 of its product.

4 (b)(1) A discount medical plan organization shall have a
5 written agreement with a marketer prior to the marketer's
6 marketing, promoting, selling or distributing the discount
7 medical plan.

8 (2) The agreement between the discount medical plan
9 organization and the marketer shall prohibit the marketer
10 from using advertising, marketing materials, brochures and
11 discount medical plan cards without the discount medical
12 plan organization's approval in writing.

13 (3) The discount medical plan organization shall be
14 bound by and responsible for the activities of a marketer that
15 are within the scope of the marketer's agency relationship
16 with the organization.

17 (c) A discount medical plan organization shall approve in
18 writing all advertisements, marketing materials, brochures
19 and discount cards used by marketers to market, promote, sell
20 or distribute the discount medical plan prior to their use.

§33-15E-12. Annual reports.

1 (a) If the information required in subsection (b) of this
2 section is not provided at the time of renewal of a license
3 under section four of this article, a discount medical plan
4 organization shall file an annual report with the
5 commissioner in the form prescribed by the commissioner,
6 within three months after the end of each fiscal year.

7 (b) The report shall include:

8 (1) Audited financial statements prepared in accordance
9 with generally accepted accounting principals certified by an
10 independent certified public accountant, including the
11 organization's balance sheet, income statement and statement
12 of changes in cash flow for the preceding year, except that,
13 subject to the approval of the commissioner, an organization
14 that is an affiliate of a parent entity that is publicly traded and
15 that prepares audited financial statements reflecting the
16 consolidated operations of the parent entity may instead
17 submit the audited financial statements of the parent entity
18 and a written guaranty that the minimum capital requirements
19 required under section five of this article will be met by the
20 parent entity;

21 (2) Any changes in the list of names and residence
22 addresses of all persons responsible for the conduct of the
23 organization's affairs, together with a disclosure of the extent

24 and nature of any contracts or arrangements with these
25 persons and the discount medical plan organization, including
26 any possible conflicts of interest;

27 (3) The number of discount medical plan members in the
28 state; and

29 (4) Any other information relating to the performance of
30 the discount medical plan organization that may be required
31 by the commissioner.

32 (c) Any discount medical plan organization that fails to
33 file an annual report in the form and within the time required
34 by this section may be fined up to five hundred dollars per
35 day for the first ten days during which the violation continues
36 and up to one thousand dollars per day after the first ten days
37 during which the violation continues. The commissioner may
38 also suspend the organization's authority to enroll new
39 members or to do business in this state while the violation
40 continues.

§33-15E-13. Discount prescription drug plan organizations.

1 (a) A discount prescription drug plan organization shall
2 comply with sections eight, nine, ten and eleven of this article
3 and shall report any of the information described in section
4 twelve of this article in the form and manner as the
5 commissioner may require. A discount prescription drug
6 plan organization is also subject to sections fourteen, fifteen
7 and sixteen of this article.

8 (b) Each discount prescription drug plan organization
9 shall designate and provide the commissioner with the name,
10 address and telephone number of a discount prescription drug
11 plan compliance officer responsible for ensuring compliance
12 with the provisions of this article that are applicable to
13 discount prescription drug plans and discount prescription
14 drug plan organizations.

§33-15E-14. Administrative enforcement actions; injunctions.

1 (a) The commissioner may investigate the business
2 affairs and conduct of every person applying for or holding
3 a discount medical plan organization license and the
4 operational affairs of a discount prescription drug plan
5 organization to determine whether a violation of this article
6 or any rule promulgated hereunder has occurred or is
7 occurring.

8 (b) If the commissioner has cause to believe that a
9 violation of this article or any rule promulgated hereunder
10 has occurred or is occurring and that an enforcement action
11 may be warranted, he or she shall notify the discount medical
12 plan organization or discount prescription drug plan
13 organization in writing, specifically stating the grounds for
14 enforcement action and informing the organization that it
15 may pursue a hearing on the matter in accordance with the
16 provisions of section thirteen, article two of this chapter.

17 (c) If, after notice and hearing, a violation of this article
18 or any legislative rule promulgated under this article is found,
19 the Insurance Commissioner may take one or more of the
20 following enforcement actions:

21 (1) Place a discount medical plan organization on
22 probation or suspend, revoke or refuse to issue or renew the
23 organization's license;

24 (2) Levy a civil penalty on the organization in an amount
25 not exceeding ten thousand dollars for each violation;

26 (3) Issue an administrative order requiring the discount
27 medical plan organization or discount prescription drug plan
28 organization to cease and desist from engaging in the act or
29 practice that constitutes the violation; or

30 (4) Suspend the authority of the discount medical plan
31 organization or discount prescription drug plan organization
32 to enroll new members.

33 (d) In addition to the penalties and other provisions of
34 this article, the commissioner may seek both temporary and
35 permanent injunctive relief in the circuit court of Kanawha
36 County when a discount medical plan is being operated by a
37 person or entity that is not licensed pursuant to this article or
38 any person has engaged or is engaging in any activity
39 prohibited by this article or any rule adopted pursuant to this
40 article.

§33-15E-15. Criminal penalties.

1 (a) Any person that willfully operates as or aids and abets
2 another operating as a discount medical plan organization in
3 violation of subsection (a), section four of this article, is
4 guilty of a felony and, upon conviction thereof, shall be fined
5 not more than twenty thousand dollars for each unauthorized
6 act or imprisoned in the state correctional facility not less
7 than one nor more than five years, or both fined and
8 imprisoned.

9 (b)(1) A person that collects fees for purported
10 membership in a discount medical plan or discount
11 prescription drug plan and knowingly and willfully fails to
12 provide benefits with a value of one thousand dollars or
13 more, is guilty of a felony and, upon conviction thereof, shall
14 be fined not more than two thousand five hundred dollars or
15 imprisoned in a state correctional facility not less than one
16 nor more than ten years, or both fined and imprisoned.

17 (2) A person that collects fees for purported membership
18 in a discount medical plan or discount prescription drug plan
19 and knowingly and willfully fails to provide benefits with a
20 value of less than one thousand dollars, is guilty of a
21 misdemeanor and, upon conviction thereof, shall be fined an

22 amount not to exceed two thousand five hundred dollars or
23 confined in jail for a term not to exceed one year, or both
24 fined and confined.

§33-15E-16. Insurance fraud unit.

1 The insurance fraud unit created pursuant to the
2 provisions of section eight, article forty-one of this chapter
3 may investigate suspected violations of this article.

§33-15E-17. Rules.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to carry out the provisions
4 of this article. The commissioner may also promulgate
5 emergency legislative rules to carry out the provisions of this
6 article, including rules setting forth the requirements and
7 prohibited practices with regard to the marketing of discount
8 medical plans and discount prescription drug plans and for
9 disclosures to members and prospective members of the
10 plans.



CHAPTER 126

(Com. Sub. for H.B. 4137 - By Delegate Morgan)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §33-17-9a of the Code of West Virginia, 1931, as amended, relating to clarifying that a municipality and county will be notified in writing by an

insurance company when the policy provides for cleanup or removal of the remains of a structure when a total loss to a structure occurs within that county or municipality.

Be it enacted by the Legislature of West Virginia:

That §33-17-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9a. Notice of insurance proceeds.

1 Upon notice of a claim of an insured total loss to a
2 structure located in this state, insurance companies must
3 notify the insured, and the municipality and county in
4 which the structure is located, of any coverage in the
5 insurance policy providing cleanup, removal of any refuse,
6 debris, remnants or remains of the dwelling and
7 appurtenances and securing the structure. The notification
8 shall be by letter to the insured and municipality and
9 county in which the structure is located, mailed within ten
10 days of the notification of the claim, and shall include, but
11 not be limited to:

12 (a) The terms and limits of coverage designated by
13 the insurance policy for securing, cleanup and removal;
14 and

15 (b) Any time limitations imposed on the insured for
16 securing, cleanup and removal.

CHAPTER 127

**(Com. Sub. for H.B. 4079 - By Delegates Morgan,
Martin and Hartman)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-46A-1, §33-46A-2, §33-46A-3, §33-46A-4, §33-46A-5, §33-46A-6, §33-46A-7, §33-46A-8, §33-46A-9, and §33-46A-10, all relating to Professional Employer Organizations; providing declaration of purpose and intent; providing definitions; clarifying rights, duties and obligations unaffected by the article; requiring license from the Insurance Commissioner to engage in the business of a Professional Employer Organization; setting forth licensure requirements; providing for legislative, emergency and legislative exempt rules; authorizing the Insurance Commissioner to establish licensure and other fees; allowing the Insurance Commissioner to examine business records and documents; providing for confidentiality of certain information; setting forth requirements for Professional Employer Agreements; providing requirements for workers' compensation coverage; providing enforcement measures including penalties; requiring study of health plans, taxation, unemployment and labor laws; and prohibiting self-funded health plans.

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 §33-46A-1, §33-46A-2, §33-46A-3, §33-46A-4, §33-46A-5, §33-46A-6, §33-46A-7, §33-46A-8, §33-46A-9 and §33-46A-10, all to read as follows:

ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.

- §33-46A-1. Purpose and intent.
- §33-46A-2. Definitions.
- §33-46A-3. Rights, duties and obligations unaffected by this article.
- §33-46A-4. Licensing requirements.
- §33-46A-5. Examinations; costs; confidentiality of information.
- §33-46A-6. Requirements for provisions of PEO agreements.
- §33-46A-7. Workers' compensation.
- §33-46A-8. Enforcement; penalties.
- §33-46A-9. Study of health plans, taxation, unemployment and labor laws; self-funded plans prohibited.
- §33-46A-10. Rulemaking authority; fees.

§33-46A-1. Purpose and intent.

1 The Legislature hereby finds that:

2 (1) Professional Employer Organizations (hereinafter
3 "PEOs") provide a valuable service to commerce and the
4 citizens of this state by increasing the opportunities of
5 employers to develop cost-effective methods of satisfying
6 their personnel requirements and providing employees with
7 access to certain employment benefits which might otherwise
8 not be available to them;

9 (2) PEOs operating in this state should be properly
10 recognized and regulated by the Insurance Commissioner;
11 and

12 (3) Any allocation of employer duties and responsibilities
13 between a PEO and a client-employer pursuant to this article
14 should preserve all rights to which covered employees would
15 be entitled under a traditional employment relationship.

§33-46A-2. Definitions.

1 (a) "Administrative fee" means the amount charged to a
2 client-employer by a PEO for professional employer services.
3 It does not include amounts paid by a client-employer to the
4 PEO for wages and salaries, benefits, payroll taxes,
5 withholding or assessments paid by the PEO to or on behalf
6 of covered employees under the professional employer
7 agreement.

8 (b) "Client-employer" means an employer who enters
9 into a professional employer agreement with a PEO.

10 (c) "Covered employee" means a person employed by a
11 client-employer for whom certain employer responsibilities
12 are shared or allocated pursuant to a PEO agreement. Persons
13 who are officers, directors, shareholders, partners and
14 managers of the client-employer and who perform day-to-day
15 operational services for the client-employer will be covered
16 employees only to the extent expressly set forth in the
17 professional employer agreement.

18 (d) "PEO group" means two or more PEOs that are
19 majority owned or commonly controlled by the same entity,
20 parent or controlling persons.

21 (e) "Person" means a natural person or a legal entity,
22 including, without limitation, a sole proprietorship, firm,
23 partnership, limited liability company, association, trust or
24 corporation.

25 (f) "Professional employer agreement" means a written
26 contract by and between a client-employer and a PEO under
27 which a PEO contracts to provide professional employer
28 services for an administrative fee.

29 (g) "Professional employer organization" or "PEO"
30 means a person engaged in the business of providing
31 professional employer services, regardless of its use of the
32 term, or conducting business as a "staff leasing company,"
33 "registered staff leasing company," "employee leasing
34 company," "administrative employer," or any other name.
35 For purposes of this article, the following is not a PEO:

36 (1) A person who shares employees with a
37 commonly-owned company within the meaning of section
38 414(b) and (c) of the Internal Revenue Code of 1986, as
39 amended;

40 (2) A person who neither holds itself out as a PEO, nor
41 enters into professional employer agreements as its principal
42 business activity;

43 (3) An independent contractor who assumes
44 responsibility for the product produced or service performed
45 by a person or his or her agents and who retains and exercises
46 primary direction and control over the work performed; or

47 (4) A person who provides temporary help services.

48 (h) "Professional employer services" means functions
49 that are:

50 (1) Allocated to a PEO in a PEO agreement;

51 (2) Customarily exercised by an employer with respect to
52 its employees, including, but not limited to, hiring, firing and
53 disciplining employees, paying wages, withholding and
54 paying payroll taxes, maintaining employee benefit plans,
55 and providing for mandatory workers' compensation
56 coverage;

57 (3) Exercised with respect to a majority of the employees
58 of a client-employer; and

59 (4) Intended to be of a continuing rather than a temporary
60 or seasonal nature.

61 (j) “Worksite employees” means persons employed by a
62 PEO and not by a client-employer.

§33-46A-3. Rights, duties and obligations unaffected by this article.

1 (a) Nothing in this article or in any professional employer
2 agreement affects, modifies or amends any collective
3 bargaining agreement, or the rights or obligations of a
4 client-employer, PEO or covered employee under the Federal
5 National Labor Relations Act, the Federal Railway Labor Act
6 or article one-a, chapter twenty-one of this code.

7 (b) Notwithstanding any other provision of this article,
8 nothing in this article or in any professional employer
9 agreement:

10 (1) Diminishes, abolishes or removes rights of covered
11 employees as to a client-employer or obligations of a
12 client-employer to covered employees, including but not
13 limited to rights and obligations arising from civil rights laws
14 guaranteeing nondiscrimination in employment practices;

15 (2) Affects, modifies, or amends any contractual
16 relationship or restrictive covenant between a covered
17 employee and a client-employer in effect at the time a
18 professional employer agreement becomes effective; or

19 (3) Prohibits or amends or any contractual relationship or
20 restrictive covenant that is entered into subsequent to the
21 effective date of a professional employer agreement between
22 a client-employer and a covered employee.

§33-46A-4. Licensing requirements.

1 (a) Except as otherwise provided in this article, no person
2 may provide, advertise or otherwise hold himself, herself or
3 itself out as providing professional employer services to
4 client-employers in this state, unless licensed under this
5 article.

6 (b) Every PEO operating within this state as of the
7 effective date of this article must obtain a license under this
8 article no later than the thirtieth day of July, two thousand
9 nine.

10 (c) Each applicant for licensure under this article shall
11 provide the commissioner with the following information:

12 (1) The name or names under which the PEO conducts
13 business;

14 (2) The address of the principal place of business of the
15 PEO and the address of each office it maintains in this state;

16 (3) The PEO's taxpayer or employer identification
17 number;

18 (4) A list by jurisdiction of each name under which the
19 PEO has operated in the preceding five years, including any
20 alternative names, names of predecessors and, if known,
21 successor business entities;

22 (5) A statement of ownership, which shall include the
23 name and evidence of the business experience of any person
24 who, individually or acting in concert with one or more other
25 persons, owns or controls, directly or indirectly, twenty-five
26 percent or more of the equity interests of the PEO;

27 (6) A statement of management, which shall include the
28 name and evidence of the business experience of any person

29 who serves as president, chief executive officer or otherwise
30 has the authority to act as senior executive officer of the
31 PEO; and

32 (7) The PEO's most recent audited financial statement
33 setting forth the financial condition of the PEO or PEO
34 Group, which may not be older than thirteen months. The
35 financial statement shall be prepared in accordance with
36 generally accepted accounting principles, and audited by an
37 independent certified public accountant licensed to practice
38 in the jurisdiction in which the accountant is located, and
39 shall be without qualification as to the going concern status
40 of the PEO.

41 (d) An applicant may apply to the commissioner for an
42 extension of time for filing its financial statement. A request
43 for an extension must be accompanied by a letter from an
44 independent certified public accountant licensed to practice
45 in the jurisdiction in which the accountant is located, stating
46 the reasons for the delay and the anticipated completion date
47 of the financial statement.

48 (e) A PEO who has not had sufficient operating history
49 to have an audited financial statement based upon at least
50 twelve months of operating history must meet the financial
51 capacity requirements set forth in subsection (h) of this
52 section, and present financial statements reviewed by an
53 independent certified public accountant licensed to practice
54 in the jurisdiction in which the accountant is located.

55 (f) PEOs in a PEO group may satisfy the reporting and
56 financial requirements of this licensing law on a combined or
57 consolidated basis provided that each member of the PEO
58 Group guarantees the obligations under this article of each
59 other member of the PEO Group. In the case of a PEO
60 Group that submits a combined or consolidated audited
61 financial statement including entities that are not PEOs or
62 that are not in the PEO Group, the controlling entity of the

63 PEO Group under the consolidated or combined statement
64 must guarantee the obligations of the PEOs in the PEO
65 Group.

66 (g) Within one hundred eighty days after the end of a
67 licensee's fiscal year, the licensee shall apply for renewal of
68 its license by submitting its most recent audited financial
69 statement meeting the same requirements as for initial
70 licensure, together with any changes in the information
71 required for initial licensure, all as set forth by subsection (c)
72 of this section.

73 (h) Except for limited licenses granted in accordance with
74 the provisions of subsection (i) of this section, each PEO
75 shall maintain a minimum of one hundred thousand dollars
76 in working capital, as defined by generally accepted
77 accounting principles and as reflected in the financial
78 statements submitted to the commissioner with the
79 application for an initial or renewal license. As an alternative,
80 each PEO may provide a bond, irrevocable letter of credit, or
81 securities with a minimum market value of one hundred
82 thousand dollars to the commissioner; such bond shall be
83 held by a depository designated by the commissioner,
84 securing payment by the PEO of all taxes, wages, benefits or
85 other entitlement due to or with respect to covered employees
86 if the PEO does not make such payments when due. For any
87 PEO whose annual financial statements do not indicate
88 positive working capital, the amount of the bond shall be one
89 hundred thousand dollars plus an amount sufficient to cover
90 the deficit in working capital.

91 (i) Upon such terms and for such periods as he or she
92 deems appropriate, the commissioner may grant a PEO a
93 limited license. Application for such a license must be
94 submitted on forms prescribed by the commissioner and must
95 demonstrate at a minimum that the applicant:

96 (1) Is licensed or registered as a PEO in another state
97 under terms that are substantially similar to the requirements
98 of this article;

99 (2) Does not maintain an office in this state or directly
100 solicit client-employers located within this state; and

101 (3) Does not have more than fifty covered employees
102 employed in this state on any given day.

103 (j) Except where it is otherwise specially provided, the
104 commissioner shall assess PEOs the following fees: For
105 filing an application pursuant to subsection (b) or (c) of this
106 section and an application to renew a license pursuant to
107 subsection (g) of this section, two hundred dollars; and for
108 receiving and filing annual reports, one hundred dollars.

§33-46A-5. Examinations; costs; confidentiality of information.

1 (a) The commissioner may examine or investigate the
2 business and affairs of any PEO plan he or she considers
3 necessary. The examination or investigation is subject to and
4 shall be performed in accordance with the provisions of
5 section nine, article two of this chapter.

6 (b) The commissioner shall assess the costs of an
7 examination to the PEO.

8 (c) All working papers, recorded information, documents
9 and copies thereof produced by, obtained by or disclosed to
10 the commissioner or any other person in the course of an
11 examination made under this section are subject to the
12 confidentiality provisions of subdivision (4), subsection (l),
13 section nine, article two of this chapter.

§33-46A-6. Requirements for provisions of PEO agreements.

1 (a) Each professional employer agreement shall, at a
2 minimum, allocate the responsibility to:

3 (1) Arrange for the payment of wages to covered
4 employees;

5 (2) Withhold, collect, report and remit payroll-related and
6 unemployment taxes;

7 (3) Make payments for employee benefits on behalf of
8 covered employees; and

9 (4) Provide for mandatory workers' compensation
10 coverage.

11 (b) Each professional employer agreement shall provide
12 that the client-employer shall retain the right to hire,
13 discipline, and terminate a covered employee: *Provided,*
14 That every professional employment agreement may provide
15 that the PEO has the right to terminate the professional
16 employment agreement if a client-employer refuses without
17 good cause a request from the PEO that the client-employer
18 discipline or terminate a covered employee as may be
19 necessary to fulfill the PEO's responsibilities under this
20 article and the professional employer agreement.

21 (c) Except as otherwise provided by law:

22 (1) A client-employer is solely responsible for the
23 quality, adequacy or safety of the goods or services produced
24 or sold in client-employer's business;

25 (2) A client-employer is solely responsible for directing,
26 supervising, training and controlling the work of a covered
27 employee, and is solely responsible for the acts, errors or
28 omissions of a covered employee, when the covered
29 employee is engaged in the business activities of the
30 client-employer;

31 (3) A PEO is not liable for the acts, errors or omissions
32 of a client-employer or of a covered employee of the

33 client-employer when the covered employee is acting under
34 the express direction and control of the client-employer.

35 (d) Within twenty days of its execution, every
36 professional services agreement shall be filed with the
37 commissioner. Such agreements are confidential by law and
38 privileged, are not subject to the provisions of chapter
39 twenty-nine-b of this code, and are not open to public
40 inspection.

41 (e) A covered employee is not, solely as the result of
42 being a covered employee, an employee of the PEO for
43 purposes of general liability insurance, fidelity bonds, surety
44 bonds, wage bonds or liquor liability insurance carried by the
45 PEO, unless the covered employee is included by specific
46 reference in the professional employer agreement and
47 applicable prearranged employment contract, insurance
48 contract or bond.

§33-46A-7. Workers' compensation.

1 (a) The responsibility to obtain workers' compensation
2 coverage for covered employees in compliance with all
3 applicable law shall be specifically allocated in the
4 professional employer agreement to either the
5 client-employer or the PEO.

6 (b) If the responsibility is allocated to the PEO under the
7 agreement:

8 (1) The agreement shall require that the PEO maintain
9 and provide workers' compensation coverage for the covered
10 employees from a carrier authorized to do business in this
11 state: *Provided*, That the provisions of section seven, article
12 two, chapter twenty-three of this chapter may not be
13 abrogated by a PEO agreement and the client-employer shall
14 at all times remain ultimately liable under chapter

15 twenty-three of this code to provide workers' compensation
16 coverage for its covered employees;

17 (2) The insurer shall report:

18 (A) Payroll and claims data for each client-employer to
19 the commissioner or his or her designated advisory
20 organization in a manner that identifies both the
21 client-employer and PEO; and

22 (B) Coverage status with respect to each client-employer
23 in accordance with the proof of coverage requirements
24 provided for in statute and rules.

25 (c) Workers' compensation coverage may be provided:

26 (1) On a master policy basis, under which a single policy
27 issued to the PEO provides coverage for more than one
28 client-employer, and may also provide coverage to the PEO
29 with respect to its worksite employees: *Provided*, That on or
30 before the first day of July, two-thousand eight, the
31 commissioner shall promulgate an emergency legislative rule
32 in accordance with the provisions of section fifteen, article
33 three, chapter twenty-nine of this code, and shall also propose
34 an exempt legislative rule for adoption by the industrial
35 council in accordance with the provisions of subdivision (2),
36 subsection (j), section one-a, article one, chapter twenty-three
37 of this code, establishing standards for the reporting of client-
38 employer experience in sufficient detail to enable the
39 assignment of an experience modifier upon termination of the
40 professional employer agreement: *Provided, however*, That
41 no mandatory workers' compensation coverage may be
42 provided through a PEO arrangement to any client-employers
43 on a master policy basis other than through coverage in the
44 voluntary market, as that term is defined in subsection (u),
45 section two, article two-c, chapter twenty-three of this code.

46 (2) On a multiple coordinated policy basis, under which
47 a separate policy is issued to or on behalf of each

48 client-employer or group of affiliated client-employers with
49 certain payment obligations and policy communications
50 coordinated through the PEO; or

51 (3) On any other basis approved by the commissioner.

52 (d) This article does not prohibit grouping together the
53 client-employers of a PEO for the purposes of offering
54 dividend eligibility, applying a discount to the premium
55 charged, applying a retrospective rating option arrangement
56 or the use of any other loss sensitive rating options or large
57 deductible policies as allowed under state law.

58 (e) The protection of the exclusive remedy provision of
59 section six, article two, chapter twenty-three of this code,
60 shall apply to the PEO, the client-employer, and to all
61 covered employees and other employees of the
62 client-employer irrespective of whether the PEO or the
63 client-employer obtains the workers' compensation coverage.

64 (f) The commissioner shall propose rules in accordance
65 with the provisions of subsection (c), section five, article
66 two-c, chapter twenty-three of this code, for adoption by the
67 Industrial Council, to effectuate the purposes of this section,
68 including the manner in which notice of default of a master
69 policy must be given to client-employers.

§33-46A-8. Enforcement; penalties.

1 (a) No person may offer or provide professional
2 employer services or use the names PEO, Professional
3 Employer Organization, staff leasing, employee leasing,
4 administrative employer or other title representing
5 professional employer services without holding a license
6 issued under the provisions of this article.

7 (b) The commissioner shall deny, suspend or revoke the
8 license of a PEO if he or she finds that the PEO:

9 (1) Is in an unsound financial condition;

10 (2) Is using methods or practices in the conduct of its
11 business that render its transaction of business in this state
12 hazardous or injurious to its client-employers or the public;
13 or

14 (3) Has failed to pay a judgment rendered against it in
15 this state within sixty days after the judgment has become
16 final.

17 (c) The commissioner may, after notice and opportunity
18 for a hearing in accordance with the provisions of article two,
19 chapter thirty-three of this code, deny, suspend or revoke the
20 license of a PEO if the commissioner finds that the PEO:

21 (1) Has violated any lawful rule or order of the
22 commissioner or any provision of the laws of this state;

23 (2) Has refused to be examined or to produce its
24 accounts, records and files for examination, or if any person
25 responsible for the conduct of affairs of the PEO has refused
26 to give information with respect to its affairs, or has refused
27 to perform any other legal obligation as to an examination,
28 when required by the commissioner. For purposes of this
29 section, persons responsible for the conduct of affairs of the
30 PEO include, but are not limited to, members of the board of
31 directors, board of trustees, executive committee or other
32 governing board or committee; the principal officers in the
33 case of a corporation or the partners or members in the case
34 of a partnership, association or limited liability company; any
35 shareholder or member holding directly or indirectly ten
36 percent or more of the voting stock, voting securities or
37 voting interest of the administrator; and any other person who
38 exercises control or influence over the affairs of the PEO;

39 (3) Has, without just cause, refused to pay proper claims
40 or perform services arising under its contracts or has, without
41 just cause, caused covered employees to accept less than the

42 amount due them or caused covered employees to employ
43 attorneys or bring suit against the PEO to secure full payment
44 or settlement of their claims;

45 (4) At any time fails to meet any qualification for which
46 issuance of the license could have been refused;

47 (5) Has been convicted of, or has entered a plea of guilty
48 or no contest to, a felony without regard to whether the
49 adjudication was withheld; or

50 (6) Is under suspension or revocation in another state.

51 (d) Every PEO licensed under this article is under a
52 continuing duty to notify the commissioner within ten days
53 of any of the events set forth in subdivisions (5) and (6) of
54 subsection (c) or subdivision (3) of subsection (b) of this
55 section.

56 (e) The commissioner may, in his or her discretion and
57 without advance notice or hearing, immediately suspend the
58 license of a PEO if the commissioner finds that one or more
59 of the following circumstances exist:

60 (1) The PEO is insolvent or impaired;

61 (2) A proceeding for receivership, conservatorship,
62 rehabilitation or other delinquency proceeding regarding the
63 PEO has been commenced in any state; or

64 (3) The financial condition or business practices of the
65 PEO otherwise pose an imminent threat to the public health,
66 safety or welfare of the residents of this state.

67 (f) If the commissioner finds that one or more grounds
68 exist for the suspension or revocation of a license issued
69 under this article, the commissioner may, in lieu of
70 suspension or revocation, order the PEO to pay to the State
71 of West Virginia a penalty in a sum not exceeding ten

72 thousand dollars; upon the failure of the PEO to pay the
73 penalty within thirty days after notice of the penalty, the
74 commissioner may revoke or suspend the license of the PEO.

75 (g) When a license has been revoked or suspended or
76 renewal of the license refused, the commissioner may reissue,
77 terminate the suspension or renew the license when he or she
78 is satisfied that the conditions causing the revocation,
79 suspension or refusal to renew have ceased to exist and are
80 unlikely to recur.

**§33-46A-9. Study of health plans, taxation, unemployment and
labor laws; self-funded plans prohibited.**

1 (a) The Joint Committee on Government and Finance
2 shall, in consultation with the Insurance Commissioner, the
3 Secretary of the Department of Revenue and the Secretary of
4 the Department of Commerce, study the issue of PEO
5 sponsorship of and involvement in employee health plans,
6 including their role in insuring the uninsured and
7 underinsured and their impact on the small group market, as
8 well issues related to how the operation of PEOs affects other
9 areas such as taxation and unemployment insurance. The
10 Joint Committee shall report back to the Legislature on or
11 before the thirty-first day of December, two-thousand eight
12 on its findings, conclusions and recommendations, together
13 with drafts of any legislation necessary to effectuate its
14 recommendations.

15 (b) PEOs are expressly prohibited from self-funding
16 health plans for covered employees.

§33-46A-10. Rulemaking authority; fees.

1 (a) In addition to the authority to propose rules as
2 provided in section seven of this article, the commissioner
3 may propose rules for legislative approval in accordance with
4 the provisions of article three, chapter twenty-nine-a of this

5 code, to implement the provisions of this article, including
6 but not limited to:

7 (1) Requirements for the issuance and renewal of
8 licenses;

9 (2) Requirements for denying, suspending, revoking,
10 reinstating or limiting the practice of a licensee;

11 (3) Requirements for activating inactive or revoked
12 licenses;

13 (4) Special financial and other licensing requirements for
14 small, start-up PEOs; and

15 (5) A schedule of fees.

16 (b) The commissioner may promulgate emergency rules
17 pursuant to the provisions of section fifteen, article three,
18 chapter twenty-nine-a of this code, for any purposes set forth
19 for legislative rules in subsection (a) of this section.



CHAPTER 128

**(Com. Sub. for S.B. 311 - By Senators Kessler, Plymale,
Love and Oliverio)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §52-1-14 of the Code of West Virginia, 1931, as amended, relating to authorizing judges to order jurors be drawn from another county or counties in certain cases; providing contents of court orders directing the

summoning of jurors; and providing that the county for which the jurors served shall compensate the jurors.

Be it enacted by the Legislature of West Virginia:

That §52-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-14. When and how jurors are to be summoned from a county to serve in another county.

1 (a) In any criminal case or any civil case referred to the
2 Mass Litigation Panel, in any court, if qualified jurors, not
3 exempt from serving, cannot be conveniently found in the
4 county in which the trial is to be held, the judge of the court
5 shall enter an order directing as many jurors as necessary be
6 summoned from any other county or counties: *Provided*, That
7 for those cases referred to the Mass Litigation Panel, jurors
8 may only be summoned from any contiguous county.

9 (b) The court order shall include the following:

10 (1) The date on which the jurors are required to attend;

11 (2) The county or counties from which the jurors shall be
12 drawn; and

13 (3) The number of jurors to be drawn.

14 (c) The judge issuing the order shall direct his or her
15 circuit clerk to forward a certified copy of the order to the
16 circuit clerk in the county or counties from which the jurors
17 are to be drawn.

18 (d) The circuit clerk of the court conducting the drawing
19 shall do so in the manner provided by law for the drawing of

20 petit jurors. The circuit clerk shall draw a separate jury pool
21 specifically designated for the purpose of complying with the
22 court order. The proceedings for drawing the jurors and the
23 names of the jurors drawn shall be certified by the clerk of
24 the circuit court of the county or counties designated to
25 conduct the drawing and a copy of the certification shall be
26 forwarded to the clerk of the circuit court in the county where
27 the trial is to be held. After forwarding a copy of the
28 certification, the clerk of the circuit court of the county or
29 counties from which the jurors were drawn shall summon the
30 jurors to appear for jury service in the county where the trial
31 is to be held pursuant to the provisions of section nine of this
32 article.

33 (e) Jurors summoned from a county to serve in another
34 county shall be reimbursed expenses and compensated by the
35 county for which the juror actually served.



CHAPTER 129

(Com. Sub. for H.B. 4032 - By Delegates White and Kominar)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating to payment of wages through a direct deposit system using an electronic payment card or other means of electronic transfer; defining terms; and requiring written agreement to use the payroll card.

Be it enacted by the Legislature of West Virginia:

That §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm or corporation doing business in
2 this state, except railroad companies as provided in section
3 one of this article, shall settle with its employees at least once
4 in every two weeks, unless otherwise provided by special
5 agreement, and pay them the wages due, less authorized
6 deductions and authorized wage assignments, for their work
7 or services.

8 (b) Payment required in subsection (a) of this section
9 shall be made:

10 (1) In lawful money of the United States;

11 (2) By cash order as described and required in section
12 four of this article;

13 (3) By deposit or electronic transfer of immediately
14 available funds into an employee's payroll card account in a
15 federally insured depository institution. The term "payroll
16 card account" means an account in a federally insured
17 depository institution that is directly or indirectly established
18 through an employer and to which electronic fund transfers
19 of the employee's wages, salary, commissions or other
20 compensation are made on a recurring basis, whether the
21 account is operated or managed by the employer, a third-
22 party payroll processor, a depository institution or another
23 person. "Payroll card" means a card, code or combination
24 thereof or other means of access to an employee's payroll

25 card account, by which the employee may initiate electronic
26 fund transfers or use a payroll card to make purchases or
27 payments. Payment of employee compensation by means of
28 a payroll card must be agreed upon in writing by both the
29 person, firm or corporation paying the compensation and the
30 person being compensated.

31 (4) By any method of depositing immediately available
32 funds in an employee's demand or time account in a bank,
33 credit union or savings and loan institution that may be
34 agreed upon in writing between the employee and such
35 person, firm or corporation, which agreement shall
36 specifically identify the employee, the financial institution,
37 the type of account and the account number: *Provided*, That
38 nothing herein contained shall be construed in a manner to
39 require any person, firm or corporation to pay employees by
40 depositing funds in a financial institution.

41 (c) If, at any time of payment, any employee shall be
42 absent from his or her regular place of labor and shall not
43 receive his or her wages through a duly authorized
44 representative, he or she shall be entitled to payment at any
45 time thereafter upon demand upon the proper paymaster at
46 the place where his or her wages are usually paid and where
47 the next pay is due.

48 (d) Nothing herein contained shall affect the right of an
49 employee to assign part of his or her claim against his or her
50 employer except as in subsection (e) of this section.

51 (e) No assignment of or order for future wages shall be
52 valid for a period exceeding one year from the date of the
53 assignment or order. An assignment or order shall be
54 acknowledged by the party making the same before a notary
55 public or other officer authorized to take acknowledgments,
56 and any order or assignment shall specify thereon the total
57 amount due and collectible by virtue of the same and three

58 fourths of the periodical earnings or wages of the assignor
59 shall at all times be exempt from such assignment or order
60 and no assignment or order shall be valid which does not so
61 state upon its face: *Provided*, That no such order or
62 assignment shall be valid unless the written acceptance of the
63 employer of the assignor to the making thereof, is endorsed
64 thereon: *Provided, however*, That nothing herein contained
65 shall be construed as affecting the right of employer and
66 employees to agree between themselves as to deductions to
67 be made from the payroll of employees.

CHAPTER 130

**(H.B. 4394 - By Delegates Tucker, Martin, Perry, Stemple,
Perdue, Shook, Hamilton and Sobonya)**

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §21-9-2 of the Code of West Virginia, 1931, as amended, relating to the restoration 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 (1) A person who personally does work on a
18 manufactured home which the person owns or leases; or

19 (2) A person who is licensed under article eleven of this
20 chapter and is performing work on a manufactured home
21 pursuant to a contract with a person licensed under section
22 nine of this article.

23 (d) "Dealer" means any person engaged in this state in
24 the sale, leasing or distributing of new or used manufactured
25 homes, primarily to persons who in good faith purchase or
26 lease a manufactured home for purposes other than resale.

27 (e) "Defect" includes any defect in the performance,
28 construction, components or material of a manufactured
29 home that renders the home or any part of the home not fit
30 for the ordinary use for which it was intended.

31 (f) “Distributor” means any person engaged in this state
32 in the sale and distribution of manufactured homes for resale.

33 (g) “Federal standards” means the National Manufactured
34 Housing Construction and Safety Standards Act of 1974, and
35 federal manufactured home construction and safety standards
36 and regulations promulgated by the Secretary of HUD to
37 implement that act.

38 (h) “HUD” means the United States Department of
39 Housing and Urban Development.

40 (i) “Manufacturer” means any person engaged in
41 manufacturing or assembling manufactured homes, including
42 any person engaged in importing manufactured homes for
43 resale.

44 (j) “Manufactured home” means a structure, transportable
45 in one or more sections, which in the traveling mode is eight
46 body feet or more in width or forty or more feet in length or,
47 when erected on site, is three hundred twenty or more square
48 feet, and which is built on a permanent chassis and designed
49 to be used as a dwelling with or without a permanent
50 foundation when connected to the required utilities, and
51 includes the plumbing, heating, air-conditioning and
52 electrical systems contained therein; except that such term
53 shall include any structure which meets all the requirements
54 of this definition except the size requirements and with
55 respect to which the manufacturer voluntarily files a
56 certificate which complies with the applicable federal
57 standards. Calculations used to determine the number of
58 square feet in a structure will be based on the structure’s
59 exterior dimensions measured at the largest horizontal
60 projections when erected on site.

61 (k) “Purchaser” means the first person purchasing a
62 manufactured home in good faith for purposes other than
63 resale.

CHAPTER 131

(S.B. 253 - By Senator Sypolt)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §30-13A-27 of the Code of West Virginia, 1931, as amended, relating to specifying the United States survey foot and the associated conversion factor of one meter equals 39.37/12 feet for the purposes of the West Virginia Coordinate System of 1983.

Be it enacted by the Legislature of West Virginia:

That §30-13A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-27. West Virginia coordinate systems; definition; plane coordinates, limitations of use; conversion factor for meters to feet.

- 1 (a) The systems of plane coordinates which have been
- 2 established by the National Ocean Survey/National Geodetic
- 3 Survey (formerly the United States Coast and Geodetic
- 4 Survey) or its successors for defining and stating the
- 5 geographic position or locations of points on the surface of
- 6 the earth within West Virginia are to be known and
- 7 designated as the West Virginia Coordinate System of 1927
- 8 and the West Virginia Coordinate System of 1983.

9 (b) For the purpose of the use of this system the state is
10 divided into a North Zone and a South Zone.

11 The area now included in the following counties is the
12 North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant,
13 Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion,
14 Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants,
15 Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and
16 Wood.

17 The area now included in the following counties is the
18 South Zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette,
19 Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln,
20 Logan, McDowell, Mason, Mercer, Mingo, Monroe,
21 Nicholas, Pendleton, Pocahontas, Putnam, Raleigh,
22 Randolph, Roane, Summers, Upshur, Wayne, Webster and
23 Wyoming.

24 (c) As established for use in the North Zone, the West
25 Virginia Coordinate System of 1927 or the West Virginia
26 Coordinate System of 1983 shall be named and in any land
27 description in which it is used it shall be designated the West
28 Virginia Coordinate System of 1927 North Zone or West
29 Virginia Coordinate System of 1983 North Zone.

30 As established for use in the South Zone, the West
31 Virginia Coordinate System of 1927 or the West Virginia
32 Coordinate System of 1983 shall be named and in any land
33 description in which it is used it shall be designated the West
34 Virginia Coordinate System of 1927 South Zone or West
35 Virginia Coordinate System of 1983 South Zone.

36 (d) The plane coordinate values for a point on the earth's
37 surface, used to express the geographic position or location
38 of the point in the appropriate zone of this system, shall
39 consist of two distances, expressed in U. S. Survey feet and
40 decimals of a foot when using the West Virginia Coordinate

41 System of 1927 and determined in meters and decimals when
42 using the West Virginia Coordinate System of 1983, but
43 which may be converted to and expressed in feet and
44 decimals of a foot. One of these distances, to be known as
45 the x-coordinate, shall give the position in an east-and-west
46 direction. The other, to be known as the y-coordinate, shall
47 give the position in a north-and-south direction.

48 These coordinates shall be made to depend upon and
49 conform to plane rectangular coordinate values for the
50 monumented points of the North American Horizontal
51 Geodetic Control Network as published by the National
52 Ocean Survey/National Geodetic Survey (formerly the
53 United States Coast and Geodetic Survey) or its successors
54 and whose plane coordinates have been computed on the
55 system defined by this section. Any such station may be
56 used for establishing a survey connection to either West
57 Virginia Coordinate System.

58 (e) For purposes of describing the location of any survey
59 station or land boundary corner in the State of West Virginia,
60 it shall be considered a complete, legal and satisfactory
61 description of the location to give the position of the survey
62 station or land boundary corner on the system of plane
63 coordinates defined in this section. Nothing contained in this
64 section requires a purchaser or mortgagee of real property to
65 rely wholly on a land description, any part of which depends
66 exclusively upon either West Virginia Coordinate System.

67 (f) When any tract of land to be defined by a single
68 description extends from one into the other of the coordinate
69 zones specified in this section, the position of all points on its
70 boundaries may refer to either of the two zones. The zone
71 which is being used specifically shall be named in the
72 description.

73 (g)(1) For purposes of more precisely defining the West
74 Virginia Coordinate System of 1927, the following definition

75 by the United States Coast and Geodetic Survey (now
76 National Ocean Survey/National Geodetic Survey) is
77 adopted:

78 The West Virginia Coordinate System of 1927 North
79 Zone is a Lambert conformal conic projection of the Clarke
80 Spheroid of 1866, having standard parallels at north latitudes
81 39 degrees and 00 minutes and 40 degrees and 15 minutes,
82 along which parallels the scale shall be exact. The origin of
83 coordinates is at the intersection of the meridian 79 degrees
84 30 minutes west of Greenwich and the parallel 38 degrees 30
85 minutes north latitude. This origin is given the coordinates:
86 $x = 2,000,000$ feet and $y = 0$ feet.

87 The West Virginia Coordinate System of 1927 South
88 Zone is a Lambert conformal conic projection of the Clarke
89 Spheroid of 1866, having standard parallels at north latitudes
90 37 degrees 29 minutes and 38 degrees 53 minutes, along
91 which parallels the scale shall be exact. The origin of
92 coordinates is at the intersection of the meridian 81 degrees
93 00 minutes west of Greenwich and the parallel 37 degrees 00
94 minutes north latitude. This origin is given the coordinates:
95 $x = 2,000,000$ feet and $y = 0$ feet.

96 (2) For purposes of more precisely defining the West
97 Virginia Coordinate System of 1983, the following definition
98 by the National Ocean Survey/National Geodetic Survey is
99 adopted:

100 The West Virginia Coordinate System of 1983 North
101 Zone is a Lambert conformal conic projection of the North
102 American Datum of 1983, having standard parallels at north
103 latitudes 39 degrees and 00 minutes and 40 degrees and 15
104 minutes, along which parallels the scale shall be exact. The
105 origin of coordinates is at the intersection of the meridian 79
106 degrees 30 minutes west of Greenwich and the parallel 38
107 degrees 30 minutes north latitude. This origin is given the
108 coordinates: $x = 600,000$ meters and $y = 0$ meters.

109 The West Virginia Coordinate System of 1983 South
110 Zone is a Lambert conformal conic projection of the North
111 American Datum of 1983, having standard parallels at north
112 latitudes 37 degrees 29 minutes and 38 degrees 53 minutes,
113 along which parallels the scale shall be exact. The origin of
114 coordinates is at the intersection of the meridian 81 degrees
115 00 minutes west of Greenwich and the parallel 37 degrees 00
116 minutes north latitude. This origin is given the coordinates:
117 $x = 600,000$ meters and $y = 0$ meters.

118 (h) No coordinates based on the West Virginia
119 Coordinate System, purporting to define the position of a
120 point on a land boundary, may be presented to be recorded in
121 any public records or deed records unless the point is based
122 on a public or private monumented horizontal control station
123 established in conformity with the standards of accuracy and
124 specifications for first order or better geodetic surveying as
125 prepared and published by the Federal Geodetic Control
126 Committee of the United States Department of Commerce.
127 Standards and specifications of the Federal Geodetic Control
128 Committee or its successor in force on the date of the survey
129 apply. The publishing of the existing control stations, or the
130 acceptance with intent to publish the newly established
131 control stations, by the National Ocean Survey/National
132 Geodetic Survey is evidence of adherence to the Federal
133 Geodetic Control Committee specifications. The limitations
134 specified in this section may be modified by a duly
135 authorized state agency to meet local conditions.

136 (i) The use of the term "West Virginia Coordinate System
137 of 1927 North or South Zone" or "West Virginia Coordinate
138 System of 1983 North or South Zone" on any map, report or
139 survey or other document shall be limited to coordinates
140 based on the West Virginia Coordinate System as defined in
141 this section.

142 (j) A plat and a description of survey must show the basis
143 of control identified by the following:

144 (1) The monument name or the point identifier on which
145 the survey is based;

146 (2) The order of accuracy of the base monument; and

147 (3) The coordinate values used to compute the corner
148 positions.

149 (k) Nothing in this section prevents the recordation in any
150 public record of any deed, map, plat, survey, description or
151 of any other document or writing of whatever nature which
152 would otherwise constitute a recordable instrument or
153 document even though the same is not based upon or done in
154 conformity with the West Virginia Coordinate System
155 established by this section, nor does nonconformity with the
156 system invalidate any deed, map, plat, survey, description or
157 other document which is otherwise proper.

158 (l) For purpose of this section a foot equals a United
159 States Survey foot. The associated factor of one meter equals
160 39.37/12 feet shall be used in any conversion necessitated by
161 changing values from meters to feet.



CHAPTER 132

(Com. Sub. for H.B. 4147 - By Delegates DeLong and Armstead)

[Passed February 7, 2008; in effect from passage.]
[Approved by the Governor on February 14, 2008.]

AN ACT to amend and reenact §5A-4-5 of the Code of West Virginia, 1931, as amended, relating to legislative parking at the State Capitol Complex; providing for a joint policy of the Speaker of the House of Delegates and the President of the State

Senate on parking; revising parking penalties to incorporate certain rules; allowing the Speaker of the House of Delegates and the President of the State Senate to designate other times and locations for legislative parking; and authorizing the Speaker of the House of Delegates and the President of the State Senate to designate persons for parking enforcement.

Be it enacted by the Legislature of West Virginia:

That §5A-4-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-5. Regulation of parking on state-owned or -leased property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

1 (a) It is the intent of the Legislature to provide a parking
2 facility for the general public and to direct the Secretary of
3 the Department of Administration to plan and construct a
4 parking garage at the State Capitol Complex that will provide
5 sufficient and additional parking for the general public.

6 (b) The secretary may regulate the parking of motor
7 vehicles in accordance with the provisions of this section
8 with regard to the following state-owned property in the city
9 of Charleston, Kanawha County:

10 (1) The east side of Greenbrier Street between Kanawha
11 Boulevard and Washington Street, East;

12 (2) The west side of California Avenue between
13 Kanawha Boulevard and Washington Street, East;

14 (3) Upon the state-owned or -leased grounds upon which
15 state office buildings number one (1) through twenty (20) and
16 the Laidley Field complex are located; and

17 (4) Upon any other property now or hereafter owned or
18 leased by the state or any of its agencies and used for parking
19 purposes in conjunction with the State Capitol or any state
20 office buildings.

21 (c) The secretary shall propose legislative rules pursuant
22 to article three, chapter twenty-nine-a of this code relating to
23 parking and to also allocate parking spaces to public officers
24 and employees of the state upon all of the property set forth
25 in subsection (b) of this section: *Provided*, That
26 notwithstanding this or any other provision of law to the
27 contrary, during sessions of the Legislature, including
28 regular, extended, extraordinary and interim sessions, and
29 any other times designated by the Speaker of the House of
30 Delegates and the President of the Senate, parking on the east
31 side of Greenbrier Street between Kanawha Boulevard and
32 Washington Street, East, in the Science and Culture Center
33 parking lot, on the north side of Kanawha Boulevard between
34 Greenbrier Street and California Avenue and on the west side
35 of California Avenue between Kanawha Boulevard and
36 Washington Street, East, and any other areas designated by
37 a joint policy of the Speaker of the House of Delegates and
38 the President of the Senate shall be managed and controlled
39 by the Legislature. Any person parking any vehicle contrary
40 to this section or the rules promulgated under authority of this
41 subsection is subject to a fine as established by rule of the
42 secretary. In addition, a designee of the secretary or the
43 Legislature, as the case may be, may cause the removal,
44 immobilization or other remedy considered necessary, at
45 owner expense, of any vehicle that is parked in violation of
46 the rules or the joint policy between the Speaker of the House
47 of Delegates and the President of the Senate. Magistrates in
48 Kanawha County have jurisdiction of all the offenses.

49 (d) The secretary, the Speaker of the House of Delegates
50 and the President of the Senate may employ persons as may
51 be necessary to enforce the parking rules as provided for
52 under the provisions of this section.

53 (e) There is created in the Department of Administration
54 a special fund to be named the "Parking Garage Fund" in
55 which shall be deposited funds that are appropriated and
56 funds from other sources to be used for the construction and
57 maintenance of a parking garage on the State Capitol
58 Complex.



CHAPTER 133

(Com. Sub. for S.B. 712 - By Senators Fanning and Foster)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22-21-5 of the Code of West Virginia, 1931, as amended, relating to authorizing the Coalbed Methane Review Board to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

That §22-21-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-5. Duties of the Coalbed Methane Review Board; meetings; notice, powers and duties generally.

1 (a) The board shall meet and hold conferences and
2 hearings at times and places designated by the chairman. The
3 chairman may call a meeting of the board at any time. The
4 chairman shall call a meeting of the board: (1) Upon receipt
5 from the chief of a completed application for a permit to
6 establish one or more coalbed methane gas drilling units

7 pursuant to this article; (2) upon receipt from the chief of a
8 request pursuant to section seven of this article or comments
9 or objections pursuant to sections ten and eleven of this
10 article; or (3) within twenty days upon the written request by
11 another member of the board. Notice of all meetings shall be
12 given to each member of the board by the chairman at least
13 ten days in advance thereof, unless otherwise agreed by the
14 members.

15 (b) At least ten days prior to every meeting of the board
16 called pursuant to the provisions of this section, the chairman
17 shall also notify the applicant, all persons to whom copies of
18 the application were required to be mailed pursuant to the
19 provisions of section nine of this article and all persons who
20 filed written protests or objections with the board in
21 accordance with the provisions of section ten or eleven of this
22 article.

23 (c) A majority of the members of the board constitute a
24 quorum for the transaction of any business. A majority of the
25 members of the board is required to determine any issue
26 brought before it.

27 (d) The board shall execute and carry out, administer and
28 enforce the provisions of this article in the manner provided
29 herein. Subject to the provisions of section three of this
30 article, the board has jurisdiction and authority over all
31 persons and property necessary therefor: *Provided*, That the
32 provisions of this article do not grant to the board authority
33 or power to fix prices of coalbed methane gas.

34 (e) Within eighteen months of the effective date of this
35 article, the board shall initiate rule-making proceedings to
36 investigate the feasibility of establishing blanket bonds for
37 financial security in addition to the provisions for bonds for
38 financial security under section thirteen of this article.

39 (f) The board may:

40 (1) Take evidence and issue orders concerning
41 applications for drilling permits and coalbed methane gas
42 drilling units in accordance with the provisions of this article;

43 (2) Promulgate, pursuant to the provisions of chapter
44 twenty-nine-a of this code, and enforce reasonable rules
45 necessary to govern the practice and procedure before the
46 board;

47 (3) Propose legislative rules pursuant to the provisions of
48 chapter twenty-nine-a of this code necessary to implement
49 the powers and duties provided the board under this article,
50 notwithstanding the provisions of subsection (b), section four
51 of this article;

52 (4) Make relevant investigations of records and facilities
53 it considers proper; and

54 (5) Issue subpoenas for the attendance of and sworn
55 testimony by witnesses and subpoenas duces tecum for the
56 production of any books, records, maps, charts, diagrams and
57 other pertinent documents in its own name or at the request
58 of any party pursuant to article five, chapter twenty-nine-a of
59 this code.

CHAPTER 134

**(Com. Sub. for H.B. 4209 - By Delegates Brown, Miley, Burdiss,
Talbot and Overington)**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the

promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; the promulgation of administrative rules by the Department of Administration and the procedures relating thereto legislative mandate or authorization; the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to the leasing of space and acquisition of real property on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to controlling the Public Land Corporation's sale, lease, exchange or transfer of lands and minerals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Defined Contribution System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employee's Retirement System;

authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service and loan interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; and authorizing the Ethics Commission to promulgate a legislative rule relating to the solicitation and receipt of gifts and charitable contributions by public employees and officials.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

Article

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter
2 twenty-nine-a of the Code of West Virginia, the Legislature
3 expressly authorizes the promulgation of the rules described
4 in articles two through eleven, inclusive, of this chapter,
5 subject only to the limitations set forth with respect to each
6 such rule in the section or sections of this chapter authorizing
7 its promulgation. Legislative rules promulgated pursuant to
8 the provisions of articles one through eleven, inclusive, of
9 this chapter in effect at the effective date of this section shall
10 continue in full force and effect until reauthorized in this
11 chapter by legislative enactment or until amended by

- 12 emergency rule pursuant to the provisions of article three,
- 13 chapter twenty-nine-a of this code.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

§64-2-2. Consolidated Public Retirement Board.

§64-2-3. Ethics Commission.

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section eleven, article ten, chapter five-
4 a, of this code, modified by the Department of
5 Administration to meet the objections of the legislative rule-
6 making review committee and refiled in the State Register on
7 the second day of November, two thousand seven, relating to
8 the Department of Administration (leasing of space and
9 acquisition of real property on behalf of state spending units,
10 148 CSR 19), is authorized with the following amendment:

11 On page four, subdivision 5.3.b, at the beginning of the
12 second line of the subdivision, by striking the words “limited
13 liability company”;

14 On page four, following subsection 5.3.b, by inserting a
15 new subsection 5.3.c as follows and relettering the remaining
16 subdivisions:

17 “5.3.c. When the lessor is a limited liability company
18 which is member managed, any member authorized to bind
19 the limited liability company shall execute the lease. When
20 the lessor is a limited liability company which is manager
21 managed, the manager shall execute the lease on behalf of the
22 limited liability company.”;

23 On page six, subdivision 9.8.a, at the beginning of the
24 second line of the subdivision, by striking the words “limited
25 liability company”; and

26 On page six, following subdivision 9.8.a, by inserting a
27 new subdivision 9.8.a as follows and relettering the
28 remaining subdivisions:

29 “9.8.a. When the seller is a limited liability company
30 which is member managed, any member authorized to bind
31 the limited liability company shall execute the contract.
32 When the seller is a limited liability company which is
33 manager managed, the manager shall execute the contract on
34 behalf of the limited liability company.”.

35 (b) The legislative rule filed in the State Register on the
36 twenty-seventh day of July, two thousand seven, authorized
37 under the authority of section four, article three, chapter five-
38 a, of this code, relating to the Department of Administration
39 (leasing space on behalf of state spending units, 148 CSR 2),
40 is authorized.

41 (c) The legislative rule filed in the State Register on the
42 twenty-seventh day of July, two thousand seven, authorized
43 under the authority of section four, article eleven, chapter
44 five-a, of this code, modified by the Department of
45 Administration to meet the objections of the legislative rule-
46 making review committee and refiled in the State Register on
47 the twenty-first day of December, two thousand seven,
48 relating to the Department of Administration (controlling the
49 Public Land Corporation’s sale, lease, exchange or transfer
50 of lands and minerals, 148 CSR 20), is authorized with the
51 following amendment:

52 On page one, subsection 2.4, following the words
53 “appraisal made by” by striking the remainder of the
54 subsection and inserting in lieu thereof the words “the Real

55 Estate Division using the principles contained in the current
56 Uniform Appraisal Standards for Federal Land Acquisitions
57 published under the auspices of the Interagency Land
58 Acquisition Conference” and a period;

59 On page one, subsection 2.5, by striking the subsection in
60 its entirety and renumbering the remaining subsections;

61 On page one, subsection 2.7, following the words “Public
62 Land Corporation”, by inserting the words “or corporation”;

63 On page one, subsection 2.8, following the word “be” by
64 striking the word “the”;

65 On page one, subsection 2.8, following the word
66 “appointed” by inserting the words “by the”; and

67 On page one, subdivision 3.1.a, at the end of the second
68 line of the subdivision, by striking the word “independent”;

69 On page one, subdivision 3.1.b, on the sixth line of the
70 subdivision, following words “shall be”, by striking the word
71 “available” and inserting in lieu thereof the words “made
72 available by the corporation”.

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of July, two thousand seven, authorized
3 under the authority of section one, article ten-d, chapter five,
4 of this code, relating to the Consolidated Public Retirement
5 Board (general provisions, 162 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-fourth day of July, two thousand seven, authorized
8 under the authority of section one, article ten-d, chapter five,
9 of this code, relating to the Consolidated Public Retirement

10 Board (benefit determination and appeal, 162 CSR 2), is
11 authorized with the following:

12 On page one, subsection 2.3, by striking out the language
13 of the subsection and inserting in lieu thereof the following:
14 “After a member receives either a lump sum distribution of
15 contributions or the initial payment of a retirement benefit
16 from the retirement system in which the member was or is a
17 participant, the member is not eligible to apply for or receive
18 disability retirement benefits.”;

19 On page one, subsection 3.1, line twelve, following the
20 word “physician”, by inserting the word “licensed”;

21 On page four, subsection 6.3, in the last sentence of the
22 subsection, by striking out the words “Consolidated Public
23 Retirement”;

24 And,

25 On page four, subsection 6.3, in the last line of the
26 subsection, following the word “Board”, by inserting the
27 word “staff”.

28 (c) The legislative rule filed in the State Register on the
29 twenty-fourth day of July, two thousand seven, authorized
30 under the authority of section one, article ten-d, chapter five,
31 of this code, relating to the Consolidated Public Retirement
32 Board (Teachers’ Defined Contribution System, 162 CSR 3),
33 is authorized.

34 (d) The legislative rule filed in the State Register on the
35 twenty-fourth day of July, two thousand seven, authorized
36 under the authority of section one, article ten-d, chapter five,
37 of this code, relating to the Consolidated Public Retirement
38 Board (Teachers’ Retirement System, 162 CSR 4), is
39 authorized with the following amendment:

40 On page seven, subsection 8.4, line three, following the
41 words “calendar month”, by striking out the words “being
42 reported” and inserting in lieu thereof the words “for which
43 the payment is made”.

44 (e) The legislative rule filed in the State Register on the
45 twenty-fourth day of July, two thousand seven, authorized
46 under the authority of section one, article ten-d, chapter five,
47 of this code, modified by the Consolidated Public Retirement
48 Board to meet the objections of the legislative rule-making
49 review committee and refiled in the State Register on the
50 second day of November, two thousand seven, relating to the
51 Consolidated Public Retirement Board (Public Employees
52 Retirement System, 162 CSR 5), is authorized.

53 (f) The legislative rule filed in the State Register on the
54 twenty-fourth day of July, two thousand seven, authorized
55 under the authority of section one, article ten-d, chapter five,
56 of this code, relating to the Consolidated Public Retirement
57 Board (refund, reinstatement, retroactive service and loan
58 interest factors, 162 CSR 7), is authorized with the following
59 amendment:

60 On page five, subsection 6.3, line three, following the
61 words “calendar month”, by striking out the words “being
62 reported” and inserting in lieu thereof the words “for which
63 the payment is made”.

64 (g) The legislative rule filed in the State Register on the
65 twenty-fourth day of July, two thousand seven, authorized
66 under the authority of section one, article ten-d, chapter five,
67 of this code, modified by the Consolidated Public Retirement
68 Board to meet the objections of the legislative rule-making
69 review committee and refiled in the State Register on the
70 fourth day of January, two thousand eight, relating to the
71 Consolidated Public Retirement Board (West Virginia State
72 Police, 162 CSR 9), is authorized.

73 (h) The legislative rule filed in the State Register on the
74 twenty-fourth day of July, two thousand seven, authorized
75 under the authority of section one, article ten-d, chapter five,
76 of this code, relating to the Consolidated Public Retirement
77 Board (Deputy Sheriff Retirement System, 162 CSR 10), is
78 authorized.

***§64-9-3. Ethics Commission.**

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand seven, authorized
3 under the authority of section two, article two, chapter six-b,
4 of this code, modified by the Ethics Commission to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the State Register on the fifteenth day of
7 January, two thousand eight, relating to the Ethics
8 Commission (solicitation and receipt of gifts and charitable
9 contributions by public employees and officials, 158 CSR 7),
10 is authorized with the following amendments:

11 On page six, section six, by deleting subsections 6.8 and
12 6.9 in their entirety and inserting in lieu thereof the
13 following:

14 “6.8. Fund-raising activities based on an exchange of
15 value are not gift solicitations and are permissible.”

16 On page six, section six by renumbering the remaining
17 subsection;

18 On page six, section seven, subdivision 7.1.a., after the
19 word “months” by adding the following:

20 “This subsection does not apply to purely law-
21 enforcement agencies, officials or employees who do not
22 actually regulate or exercise regulatory control over other

*CLERK’S NOTE: §64-2-3 was erroneously designated as §64-9-3 throughout the life of the bill (H.B. 4209) and, therefore, has been retained.

23 persons but merely enforce existing laws and rules as to all
24 applicable persons”;

25 On page six, section seven, subsection 7.2., after the
26 word “agency” by adding the following:

27 “This subsection does not apply to purely law
28 enforcement agencies, officials or employees who do not
29 actually regulate or exercise regulatory control over other
30 persons but merely enforce existing laws and rules as to all
31 applicable persons”;

32 On page six, section seven, subsection 7.4, by deleting
33 the words “or infer”;

34 On pages six and seven, section seven by deleting
35 subsections 7.5 and 7.6 in their entirety;

36 On page seven, section eight, subsection 8.3, by deleting
37 the subsection in its entirety and inserting in lieu thereof the
38 following:

39 “8.3 Law-enforcement officers may not solicit for charity
40 while in uniform except as otherwise provided for in this
41 rule, but may show identification upon request.”;

42 On page seven, section eight, subsection 8.4, by deleting
43 the comma and the words “employees or members of an
44 association of law-enforcement officers” and inserting in lieu
45 thereof the following words “or employees”;

46 On pages seven and eight, section eight, subsection 8.5,
47 by deleting the subsection in its entirety and inserting in lieu
48 thereof the following:

49 “Law-enforcement officers or associations composed of
50 law-enforcement officers may not provide signs, stickers,

51 decals or other items of display by individual donors showing
52 whether or not a donation has been made on account of any
53 charitable contribution solicited on behalf of law-
54 enforcement officers or their association, unless the signs,
55 stickers, decals or other items of display contain the
56 following disclaimer: ‘The holder of this item is not entitled
57 to any special treatment.’; *Provided*, That certificates,
58 plaques or other items of display which are not intended for
59 display on motor vehicles may be distributed to donors
60 without the inclusion of the disclaimer; *Provided, however*,
61 That an association may provide to its members who are
62 currently serving as law-enforcement officers, or who
63 previously served as law-enforcement officers, a sign, sticker,
64 decal or other item of display, including those items intended
65 for display in a motor vehicle, which demonstrate that a
66 present or former law-enforcement officer is a member of an
67 association or fraternal group primarily composed of law-
68 enforcement officers, without the inclusion of the
69 disclaimer.”;

70 On page eight, section eight, subsection 8.7, by deleting
71 the subsection in its entirety and inserting in lieu thereof the
72 following:

73 “8.7 Law-enforcement officers may not pick up a
74 donation while in uniform except as otherwise provided for
75 in this rule.”;

76 And,

77 On page eight, section eight, subsection 8.8, by deleting
78 the words “such as a sale of baked goods or a car wash”.

CHAPTER 135

**(Com. Sub. for S.B. 373 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing certain legislative rules; authorizing the Department of Environmental Protection to promulgate legislative rules relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the ambient air quality

standard for nitrogen dioxide; authorizing the Department of Environmental Protection to repeal a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the prevention and control of emissions from hospital/medical/infectious waste incinerators; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to greenhouse gas emissions inventory program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of refuse; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to repeal a legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining blasting; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and development; authorizing the Department of

Environmental Protection to promulgate a legislative rule relating to environmental excellence program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards for the beneficial use of filtrate from water treatment plants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Recycling Assistance Grant Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tanks; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to antidegradation implementation procedures; and authorizing the Solid Waste Management Board to promulgate a legislative rule relating to performance measures and review standards for solid waste authorities operating commercial solid waste facilities.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931 as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

§64-3-2. Solid Waste Management Board.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand seven, authorized
3 under the authority of section four, article five, chapter
4 twenty-two of this code, relating to the Department of
5 Environmental Protection (emission standards for hazardous
6 air pollutants 45 CSR 34), is authorized.

7 (b) The legislative rule filed in the State Register on the
8 nineteenth day of December, two thousand seven, authorized
9 under the authority of section four, article five, chapter
10 twenty-two of this code, relating to the Department of
11 Environmental Protection (ambient air quality standard for
12 nitrogen dioxide, 45 CSR 12), is repealed.

13 (c) The legislative rule filed in the State Register on the
14 nineteenth day of December, two thousand seven, authorized
15 under the authority of section four, article five, chapter
16 twenty-two of this code, relating to the Department of
17 Environmental Protection (emission standards for hazardous
18 air pollutants pursuant to 40 CFR part 61, 45 CSR 15), is
19 repealed.

20 (d) The legislative rule filed in the State Register on the
21 twenty-sixth day of July, two thousand seven, authorized
22 under the authority of section four, article five, chapter
23 twenty-two of this code, relating to the Department of
24 Environmental Protection (standards of performance for new
25 stationary sources 45 CSR 16), is authorized.

26 (e) The legislative rule filed in the State Register on the
27 twenty-sixth day of July, two thousand seven, authorized
28 under the authority of section four, article five, chapter
29 twenty-two of this code, relating to the Department of
30 Environmental Protection (control of air pollution from
31 combustion of solid waste, 45 CSR 18), is authorized.

32 (f) The legislative rule filed in the State Register on the
33 nineteenth day of December, two thousand seven, authorized
34 under the authority of section four, article five, chapter
35 twenty-two of this code, relating to the Department of
36 Environmental Protection (to prevent and control emissions
37 from hospital/medical/infectious waste incinerators, 45 CSR
38 24), is repealed.

39 (g) The legislative rule filed in the State Register on the
40 twenty-sixth day of July, two thousand seven, authorized
41 under the authority of section four, article five, chapter
42 twenty-two of this code, relating to the Department of
43 Environmental Protection (control of air pollution from
44 hazardous waste treatment, storage and disposal facilities, 45
45 CSR 25), is authorized.

46 (h) The legislative rule filed in the State Register on the
47 twenty-sixth day of July, two thousand seven, authorized
48 under the authority of section four, article five, chapter
49 twenty-two of this code, relating to the Department of
50 Environmental Protection (control of annual nitrogen oxides
51 emissions, 45 CSR 39), is authorized.

52 (i) The legislative rule filed in the State Register on the
53 twenty-sixth day of July, two thousand seven, authorized
54 under the authority of section four, article five, chapter
55 twenty-two of this code, modified by the Department of
56 Environmental Protection to meet the objections of the
57 Legislative Rule-Making Review Committee and refiled in
58 the State Register on the fourteenth day of January, two
59 thousand eight, relating to the Department of Environmental
60 Protection (control of ozone season nitrogen oxides
61 emissions, 45 CSR 40), is authorized.

62 (j) The legislative rule filed in the State Register on the
63 twenty-sixth day of July, two thousand seven, authorized
64 under the authority of section four, article five, chapter

65 twenty-two of this code, relating to the Department of
66 Environmental Protection (control of annual sulfur dioxide
67 emissions, 45 CSR 41), is authorized.

68 (k) The legislative rule filed in the State Register on the
69 twenty-sixth day of July, two thousand seven, authorized
70 under the authority of section nineteen, article five, chapter
71 twenty-two of this code, modified by the Department of
72 Environmental Protection to meet the objections of the
73 Legislative Rule-Making Review Committee and refiled in
74 the State Register on the fourteenth day of January, two
75 thousand eight, relating to the Department of Environmental
76 Protection (greenhouse gas emissions inventory program, 45
77 CSR 42), is authorized.

78 (l) The legislative rule filed in the State Register on the
79 twenty-sixth day of July, two thousand seven, authorized
80 under the authority of section four, article five, chapter
81 twenty-two of this code, relating to the Department of
82 Environmental Protection (control of air pollution from
83 combustion of refuse, 45 CSR 6), is authorized.

84 (m) The legislative rule filed in the State Register on the
85 twenty-sixth day of July, two thousand seven, authorized
86 under the authority of section four, article five, chapter
87 twenty-two of this code, modified by the Department of
88 Environmental Protection to meet the objections of the
89 Legislative Rule-Making Review Committee and refiled in
90 the State Register on the fourteenth day of January, two
91 thousand eight, relating to the Department of Environmental
92 Protection (ambient air quality standards, 45 CSR 8), is
93 authorized.

94 (n) The legislative rule filed in the State Register on the
95 nineteenth day of December, two thousand seven, authorized
96 under the authority of section four, article five, chapter
97 twenty-two of this code, relating to the Department of

98 Environmental Protection (ambient air quality standards for
99 carbon monoxide and ozone, 45 CSR 9), is repealed.

100 (o) The legislative rule filed in the State Register on the
101 twenty-sixth day of July, two thousand seven, authorized
102 under the authority of section four, article three-a, chapter
103 twenty-two of this code, modified by the Department of
104 Environmental Protection to meet the objections of the
105 Legislative Rule-Making Review Committee and refiled in
106 the State Register on the nineteenth day of December, two
107 thousand seven, relating to the Department of Environmental
108 Protection (surface mining blasting, 199 CSR 1), is
109 authorized, with the following amendments:

110 On page nine, section 3, after “3.8.a.” by inserting the
111 following: At least thirty days prior to commencing blasting,
112 an operator’s designee shall notify in writing all owners and
113 occupants of man-made dwellings or structures that the
114 operator or operator’s designee will perform preblast surveys.

115 (p) The legislative rule filed in the State Register on the
116 twenty-sixth day of July, two thousand seven, authorized
117 under the authority of section four, article three, chapter
118 twenty-two of this code, modified by the Department of
119 Environmental Protection to meet the objections of the
120 Legislative Rule-Making Review Committee and refiled in
121 the State Register on the nineteenth day of December, two
122 thousand seven, relating to the Department of Environmental
123 Protection (surface mining reclamation, 38 CSR 2), is
124 authorized with the following amendments:

125 On pages one hundred twenty-six through one hundred
126 thirty-two, by striking out subsection 11.8. in its entirety.

127 (q) The legislative rule filed in the State Register on the
128 twenty-sixth day of July, two thousand seven, authorized
129 under the authority of section three, article twenty-two,
130 chapter twenty-two of this code, relating to the Department

131 of Environmental Protection (voluntary remediation and
132 development, 60 CSR 3), is authorized.

133 (r) The legislative rule filed in the State Register on the
134 twenty-seventh day of July, two thousand seven, authorized
135 under the authority of section four, article twenty-five,
136 chapter twenty-two of this code, relating to the Department
137 of Environmental Protection (environmental excellence
138 program, 60 CSR 8), is authorized.

139 (s) The legislative rule filed in the State Register on the
140 twenty-fourth day of July, two thousand seven, authorized
141 under the authority of section twenty-three, article fifteen,
142 chapter twenty-two of this code, modified by the Department
143 of Environmental Protection to meet the objections of the
144 Legislative Rule-Making Review Committee and refiled in
145 the State Register on the twentieth day of December, two
146 thousand seven, relating to the Department of Environmental
147 Protection (standards for beneficial use of filtrate from water
148 treatment plants, 33 CSR 9), is authorized.

149 (t) The legislative rule filed in the State Register on the
150 twenty-seventh day of July, two thousand seven, authorized
151 under the authority of section three, article fifteen-a, chapter
152 twenty-two of this code, modified by the Department of
153 Environmental Protection to meet the objections of the
154 Legislative Rule-Making Review Committee and refiled in
155 the State Register on the seventeenth day of October, two
156 thousand seven, relating to the Department of Environmental
157 Protection (recycling assistance grant program, 33 CSR 10),
158 is authorized with the following amendments:

159 On page twelve, subdivision 5.1.10., after the words
160 “telephone costs.” by striking out the remainder of the
161 subdivision and by inserting in lieu thereof the following:
162 “Rent or lease charges related to a recycling program for a
163 building, or office space are allowable expenditures.
164 However, to obtain grant funds for rent or lease charges, the

165 applicant shall provide the department with a copy of the
166 written rental or lease agreement which shall exceed twenty
167 years and meet the following criteria:

168 a. The rental or lease agreement shall not contain any
169 cancellation or termination clause,

170 b. The rental or lease agreement shall not be
171 transferrable, and

172 c. The rental or lease agreement shall not allow for
173 subleasing;”

174 On page twelve, by striking out all of subdivision 5.1.11.
175 and inserting in lieu thereof the following, to read as follows:

176 “5.1.11 Recycling Facility Construction, Improvement
177 and Repairs -- A grant may be used for, but not limited to,
178 new construction or repairs or minor improvements to an
179 existing recycling facility, such as loading docks, sheds,
180 structures, abutment walls, fences, roof repair, gravel or
181 paving, if the land is owned or leased by the grantee.
182 However, to obtain grant funds for construction,
183 improvements and repairs for rental or leased property, the
184 applicant shall provide the department a copy of the written
185 rental or lease agreement which shall exceed twenty years
186 and meet the criteria stated in subdivision 5.1.10. of this
187 rule;”

188 On page thirteen, subdivision 5.2.2., by striking out the
189 words “and buildings”;

190 And,

191 On page thirteen, subdivision 5.2.7 after the words
192 “(planting, mowing, weeding, etc.)” by inserting the words
193 “unless the purpose is to provide natural screening to
194 neighboring properties”.

195 (u) The legislative rule filed in the State Register on the
196 twenty-seventh day of July, two thousand seven, authorized
197 under the authority of section six, article eighteen, chapter
198 twenty-two of this code, relating to the Department of
199 Environmental Protection (hazardous waste management
200 system, 33 CSR 20), is authorized.

201 (v) The legislative rule filed in the State Register on the
202 twenty-sixth day of July, two thousand seven, authorized
203 under the authority of section six, article seventeen, chapter
204 twenty-two of this code, modified by the Department of
205 Environmental Protection to meet the objections of the
206 Legislative Rule-Making Review Committee and refiled in
207 the State Register on the twentieth day of December, two
208 thousand seven, relating to the Department of Environmental
209 Protection (underground storage tanks, 33 CSR 30), is
210 authorized.

211 (w) The legislative rule filed in the State Register on the
212 twenty-seventh day of July, two thousand seven, authorized
213 under the authority of section four, article eleven, chapter
214 twenty-two of this code, relating to the Department of
215 Environmental Protection (National Pollutant Discharge
216 Elimination System (NPDES) program, 47 CSR 10), is
217 authorized.

218 (x) The legislative rule filed in the State Register on the
219 twenty-sixth day of July, two thousand seven, authorized
220 under the authority of section four, article eleven, chapter
221 twenty-two of this code, modified by the Department of
222 Environmental Protection to meet the objections of the
223 Legislative Rule-Making Review Committee and refiled in
224 the State Register on the nineteenth day of December, two
225 thousand seven, relating to the Department of Environmental
226 Protection (WV/NPDES rules for coal mining facilities, 47
227 CSR 30), is authorized with the following amendments:

228 On page one, subsection 1.8., by striking out the word
229 “Secretary” and inserting in lieu thereof the word “Director”;

230 On page two, subsection 2.6., by striking out the word
231 “Secretary’s” and inserting in lieu thereof the word
232 “Director’s”;

233 On page two, subsection 2.6., by striking out the word
234 “Secretary” and inserting in lieu thereof the word “Director”;

235 On page three, after subsection 2.14. by inserting a new
236 subsection 2.15., to read as follows:

237 2.15. “Director” means the director of the Division of
238 Water and Waste Management.;

239 And renumbering the remaining subsections;

240 On page three, subsection 2.17., by striking out the word
241 “Secretary” and inserting in lieu thereof the word “Director”;

242 On page three, subsection 2.18., by striking out the word
243 “Secretary’s” and inserting in lieu thereof the word
244 “Director’s”;

245 On page four, subsection 2.28., after the words “by the”
246 by striking out the word “Secretary” and inserting in lieu
247 thereof the word “Director”;

248 On page four, subsection 2.28., after the words “with the”
249 by striking out the word “Secretary” and inserting in lieu
250 thereof the word “Director”;

251 On page four, subdivision 2.31.a., by striking out the
252 word “Secretary” and inserting in lieu thereof the word
253 “Director”;

254 On page five, subsection 2.37., by striking out the word
255 “Secretary” and inserting in lieu thereof the word “Director”;

256 On page six, subsection 2.50., by striking out the word
257 “Secretary” and inserting in lieu thereof the word “Director”;

258 On page six, subsection 2.51., by striking out the word
259 “Secretary” and inserting in lieu thereof the word “Director”;

260 On page six, subparagraph 3.1.a.6.D, by striking out the
261 word “Secretary” and inserting in lieu thereof the word
262 “Director”;

263 On page seven, subparagraph 3.1.a.6.G, after the word
264 “The” by striking out the word “Secretary” and inserting in
265 lieu thereof the word “Director”;

266 On page seven, subparagraph 3.1.a.6.G, after the words
267 “when the” by striking out the word “Secretary” and inserting
268 in lieu thereof the word “Director”;

269 On page seven, subdivision 3.2.a., by striking out the
270 word “Secretary” and inserting in lieu thereof the word
271 “Director”;

272 On page eight, subdivision 3.5.a., by striking out the
273 word “Secretary” and inserting in lieu thereof the word
274 “Director”;

275 On page eight, subdivision 3.5.b., by striking out the
276 word “Secretary” and inserting in lieu thereof the word
277 “Director”;

278 On page eight, paragraph 3.5.b.1., after the words “to
279 the” by striking out the word “Secretary” and inserting in lieu
280 thereof the word “Director”;

281 On page eight, paragraph 3.5.b.1., after the words
282 “application the” by striking out the word “Secretary” and
283 inserting in lieu thereof the word “Director”;

284 On page eight, paragraph 3.5.b.1., after the words “if the”
285 by striking out the word “Secretary” and inserting in lieu
286 thereof the word “Director”;

287 On page eight, paragraph 3.5.b.2., by striking out the
288 word “Secretary” and inserting in lieu thereof the word
289 “Director”;

290 On page eight, paragraph 3.5.c.1., by striking out the
291 word “Secretary” and inserting in lieu thereof the word
292 “Director”;

293 On page eight, paragraph 3.5.d.1., by striking out the
294 word “Secretary” and inserting in lieu thereof the word
295 “Director”;

296 On page eight, paragraph 3.5.d.3., by striking out the
297 word “Secretary” and inserting in lieu thereof the word
298 “Director”;

299 On page nine, subsection 3.6., by striking out the word
300 “Secretary” and inserting in lieu thereof the words “Director
301 of the Division of Water and Waste Management”;

302 On page nine, subdivision 3.6.a., by striking out the word
303 “Secretary” and inserting in lieu thereof the word “Director”;

304 On page nine, subdivision 3.6.b., after the words
305 “adopted by the” by striking out the word “Secretary” and
306 inserting in lieu thereof the word “Director”;

307 On page nine, subdivision 3.6.b., after the words
308 “enforced by the” by striking out the word “Secretary” and
309 inserting in lieu thereof the word “Director”;

310 On page nine, subdivision 3.6.c., after the word “The” by
311 striking out the word “Secretary” and inserting in lieu thereof
312 the word “Director”;

313 On page nine, subdivision 3.6.c., after the words “by the”
314 by striking out the word “Secretary” and inserting in lieu
315 thereof the word “Director”;

316 On page nine, subdivision 3.6.d., by striking out the word
317 “Secretary” and inserting in lieu thereof the word “Director”;

318 On page nine, subsection 4.1., by striking out the word
319 “Secretary” and inserting in lieu thereof the word “Director”;

320 On page nine, subsection 4.2., after the word “The” by
321 striking out the word “Secretary” and inserting in lieu thereof
322 the word “Director”;

323 On page nine, subsection 4.2., after the words “or the” by
324 striking out the word “Secretary” and inserting in lieu thereof
325 the word “Director”;

326 On page nine, subsection 4.3., by striking out the word
327 “Secretary” and inserting in lieu thereof the word “Director”;

328 On page ten, subsection 4.3., after the words “when the”
329 by striking out the word “Secretary” and inserting in lieu
330 thereof the word “Director”;

331 On page ten, subsection 4.3., after the words “to the” by
332 striking out the word “Secretary” and inserting in lieu thereof
333 the word “Director”;

334 On page ten, subsection 4.3., after the word “The” by
335 striking out the word “Secretary” and inserting in lieu thereof
336 the word “Director”;

337 On page ten, subdivision 4.5.a., after the words “provide
338 the” by striking out the word “Secretary” and inserting in lieu
339 thereof the word “Director”;

340 On page ten, subdivision 4.5.a., after the words “by the”
341 by striking out the word “Secretary” and inserting in lieu
342 thereof the word “Director”;

343 On page twelve, paragraph 4.5.a.17., after the word
344 “The” by striking out the word “Secretary” and inserting in
345 lieu thereof the word “Director”;

346 On page twelve, paragraph 4.5.a.17., after the words “and
347 the” by striking out the word “Secretary” and inserting in lieu
348 thereof the word “Director”;

349 On page twelve, subdivision 4.5.b., by striking out the
350 word “Secretary” and inserting in lieu thereof the word
351 “Director”;

352 On page twelve, paragraph 4.5.b.1., after the words
353 “addition, the” by striking out the word “Secretary” and
354 inserting in lieu thereof the word “Director”;

355 On page twelve, paragraph 4.5.b.1., after the words
356 “effluents, the” by striking out the word “Secretary” and
357 inserting in lieu thereof the word “Director”;

358 On page twelve, part 4.5.b.1.A.2., by striking out the
359 word “Secretary” and inserting in lieu thereof the word
360 “Director”;

361 On page fourteen, paragraph 4.5.c.1., after the words “to
362 the” by striking out the comma and the word “Secretary” and
363 inserting in lieu thereof the word “Director”;

364 On page fourteen, paragraph 4.5.c.1., after the words “as
365 the” by striking out the word “Secretary” and inserting in lieu
366 thereof the word “Director”;

367 On page fourteen, paragraph 4.5.d.1., by striking out the
368 word “Secretary” and inserting in lieu thereof the word
369 “Director”;

370 On page fifteen, subparagraph 4.5.d.1.F., by striking out
371 the word “Secretary” and inserting in lieu thereof the word
372 “Director”;

373 On page fifteen, paragraph 4.5.d.3., by striking out the
374 word “Secretary” and inserting in lieu thereof the word
375 “Director”;

376 On page sixteen, paragraph 4.5.e.3., by striking out the
377 word “Secretary” and inserting in lieu thereof the word
378 “Director”;

379 On page sixteen, subparagraph 4.5.f.2.A., by striking out
380 the word “Secretary” and inserting in lieu thereof the word
381 “Director”;

382 On page seventeen, paragraph 4.5.g.1., after the words
383 “rule, the” by striking out the word “Secretary” and inserting
384 in lieu thereof the word “Director”;

385 On page seventeen, paragraph 4.5.g.1., after the words
386 “notice, the” by striking out the word “Secretary” and
387 inserting in lieu thereof the word “Director”;

388 On page seventeen, paragraph 4.5.g.2., by striking out the
389 word “Secretary” and inserting in lieu thereof the word
390 “Director”;

391 On page seventeen, subdivision 4.7.b., by striking out the
392 word “Secretary” and inserting in lieu thereof the word
393 “Director”;

394 On page eighteen, paragraph 4.7.b.3., by striking out the
395 word “Secretary” and inserting in lieu thereof the word
396 “Director”;

397 On page eighteen, subdivision 4.7.c., by striking out the
398 word “Secretary” and inserting in lieu thereof the word
399 “Director”;

400 On page nineteen, subdivision 5.1.g., by striking out the
401 word “secretary” and inserting in lieu thereof the words
402 “Secretary or Director”;

403 On page nineteen, subsection 5.7., by striking out the
404 word “Secretary” and inserting in lieu thereof the word
405 “Director”;

406 On page nineteen, subsection 5.9., after the words “shall
407 furnish to the” by striking out the word “Secretary” and
408 inserting in lieu thereof the word “Director”;

409 On page nineteen, subsection 5.9., after the words “which
410 the” by striking out the word “Secretary” and inserting in lieu
411 thereof the word “Director”;

412 On page nineteen, subsection 5.9., after the words “shall
413 also furnish to the” by striking out the word “Secretary” and
414 inserting in lieu thereof the word “Director”;

415 On page nineteen, subsection 5.10., by striking out the
416 word “Secretary” and inserting in lieu thereof the word
417 “Director”;

418 On page twenty, subdivision 5.11.c., by striking out the
419 word “Secretary” and inserting in lieu thereof the word
420 “Director”;

421 On page twenty, paragraph 5.11.d.7., by striking out the
422 word “Secretary” and inserting in lieu thereof the word
423 “Director”;

424 On page twenty, subdivision 5.11.g., by striking out the
425 word “Secretary” and inserting in lieu thereof the word
426 “Director”;

427 On page twenty, subsection 5.12., by striking out the
428 word “Secretary” and inserting in lieu thereof the word
429 “Director”;

430 On page twenty-one, subdivision 5.13.a., by striking out
431 the word “Secretary” and inserting in lieu thereof the word
432 “Director”;

433 On page twenty-one, subdivision 5.13.b., by striking out
434 the word “Secretary” and inserting in lieu thereof the word
435 “Director”;

436 On page twenty-one, subparagraph 5.13.d.2.B., by
437 striking out the word “Secretary” and inserting in lieu thereof
438 the word “Director”;

439 On page twenty-one, subparagraph 5.13.d.2.C., by
440 striking out the word “Secretary” and inserting in lieu thereof
441 the word “Director”;

442 On page twenty-one, paragraph 5.13.d.3., by striking out
443 the word “Secretary” and inserting in lieu thereof the word
444 “Director”;

445 On page twenty-one, paragraph 5.13.d.4., by striking out
446 the word “Secretary” and inserting in lieu thereof the word
447 “Director”;

448 On page twenty-two, part 5.13.d.4.A.4., by striking out
449 the word “Secretary” and inserting in lieu thereof the word
450 “Director”;

451 On page twenty-two, part 5.13.d.4.B.4., by striking out
452 the word “Secretary” and inserting in lieu thereof the word
453 “Director”;

454 On page twenty-two, subdivision 5.13.f., by striking out
455 the word “Secretary” and inserting in lieu thereof the word
456 “Director”;

457 On page twenty-two, subdivision 5.13.g., by striking out
458 the word “Secretary” and inserting in lieu thereof the word
459 “Director”;

460 On page twenty-three, paragraph 5.14.d.1., by striking
461 out the word “Secretary” and inserting in lieu thereof the
462 word “Director”;

463 On page twenty-three, subdivision 5.14.e., after the word
464 “The” by striking out the word “Secretary” and inserting in
465 lieu thereof the word “Director”;

466 On page twenty-three, subdivision 5.14.e., after the words
467 “if the” by striking out the word “Secretary” and inserting in
468 lieu thereof the word “Director”;

469 On page twenty-three, subsection 5.16., by striking out
470 the word “Secretary” and inserting in lieu thereof the word
471 “Director”;

472 On page twenty-five, subsection 6.1., by striking out the
473 word “Secretary” and inserting in lieu thereof the word
474 “Director”;

475 On page twenty-five, subdivision 6.1.a., by striking out
476 the word “Secretary” and inserting in lieu thereof the word
477 “Director”;

478 On page twenty-five, subdivision 6.2.b., by striking out
479 the word “Secretary” and inserting in lieu thereof the word
480 “Director”;

481 On page twenty-five, paragraph 6.2.d.2., by striking out
482 the word “Secretary” and inserting in lieu thereof the word
483 “Director”;

484 On page twenty-six, paragraph 6.2.d.3., after the words
485 “Subpart G, the” by striking out the word “Secretary” and
486 inserting in lieu thereof the word “Director”;

487 On page twenty-six, subparagraph 6.2.h.1.A., by striking
488 out the word “Secretary” and inserting in lieu thereof the
489 word “Director”;

490 On page twenty-six, subparagraph 6.2.h.2.B., by striking
491 out the word “Secretary” and inserting in lieu thereof the
492 word “Director”;

493 On page twenty-six, subdivision 6.2.i., by striking out the
494 word “Secretary’s” and inserting in lieu thereof the word
495 “Director’s”;

496 On page twenty-eight, paragraph 6.2.o.5., by striking out
497 the word “Secretary” and inserting in lieu thereof the word
498 “Director”;

499 On page twenty-nine, subdivision 7.7.d., by striking out
500 the word “Secretary” and inserting in lieu thereof the word
501 “Director”;

502 On page thirty, subdivision 7.9.a., by striking out the
503 word “Secretary” and inserting in lieu thereof the word
504 “Director”;

505 On page thirty, subdivision 8.1.a., by striking out the
506 word “Secretary’s” and inserting in lieu thereof the word
507 “Director’s”;

508 On page thirty, subdivision 8.1.a., after the words “to the”
509 by striking out the word “Secretary” and inserting in lieu
510 thereof the word “Director”;

511 On page thirty, subdivision 8.1.a., after the word “The”
512 by striking out the word “Secretary” and inserting in lieu
513 thereof the word “Director”;

514 On page thirty, subdivision 8.1.b., by striking out the
515 word “Secretary” and inserting in lieu thereof the word
516 “Director”;

517 On page thirty, subdivision 8.2.a., after the words “to the”
518 by striking out the word “Secretary” and inserting in lieu
519 thereof the word “Director”;

520 On page thirty, subdivision 8.2.a., after the word “The”
521 by striking out the word “Secretary” and inserting in lieu
522 thereof the word “Director”;

523 On page thirty-one, subdivision 8.2.b., by striking out the
524 word “Secretary” and inserting in lieu thereof the word
525 “Director”;

526 On page thirty-one, paragraph 8.2.c.1., by striking out the
527 word “Secretary” and inserting in lieu thereof the word
528 “Director”;

529 On page thirty-one, subparagraph 8.2.c.1.D., after the
530 words “where the” by striking out the word “Secretary” and
531 inserting in lieu thereof the word “Director”;

532 On page thirty-one, subparagraph 8.2.c.1.D., after the
533 words “by the” by striking out the word “Secretary” and
534 inserting in lieu thereof the word “Director”;

535 On page thirty-one, subparagraph 8.2.c.1.D., after the
536 words “to the” by striking out the word “Secretary” and
537 inserting in lieu thereof the word “Director”;

538 On page thirty-two, subparagraph 8.2.c.2.B., by striking
539 out the word “Secretary” and inserting in lieu thereof the
540 word “Director”;

541 On page thirty-two, subparagraph 8.2.c.2.D., by striking
542 out the word “Secretary” and inserting in lieu thereof the
543 word “Director”;

544 On page thirty-three, subparagraph 8.2.c.2.L., by striking
545 out the word “Secretary” and inserting in lieu thereof the
546 word “Director”;

547 On page thirty-three, paragraph 8.3.a.1., after the word
548 “The” by striking out the word “Secretary” and inserting in
549 lieu thereof the word “Director”;

550 On page thirty-three, paragraph 8.3.a.1., after the words
551 “and the” by striking out the word “Secretary” and inserting
552 in lieu thereof the word “Director”;

553 On page thirty-three, paragraph 8.3.c.1., by striking out
554 the word “Secretary” and inserting in lieu thereof the word
555 “Director”;

556 On page thirty-four, subdivision 9.1.a., by striking out the
557 word “Secretary” and inserting in lieu thereof the word
558 “Director”;

559 On page thirty-four, subdivision 9.2.a., by striking out the
560 word “Secretary” and inserting in lieu thereof the word
561 “Director”;

562 On page thirty-four, paragraph 9.2.a.2., by striking out
563 the word “Secretary” and inserting in lieu thereof the word
564 “Director”;

565 On page thirty-four, subdivision 9.2.b., by striking out the
566 word “Secretary” and inserting in lieu thereof the word
567 “Director”;

568 On page thirty-five, subdivision 10.1.a., by striking out
569 the word “Secretary” and inserting in lieu thereof the word
570 “Director”;

571 On page thirty-five, subdivision 10.1.b., by striking out
572 the word “Secretary” and inserting in lieu thereof the word
573 “Director”;

574 On page thirty-five, subdivision 10.2.b., after the word
575 “the” by striking out the word “Secretary” and inserting in
576 lieu thereof the word “Director”;

577 On page thirty-five, subdivision 10.2.b., after the word
578 “The” by striking out the word “Secretary” and inserting in
579 lieu thereof the word “Director”;

580 On page thirty-five, subdivision 10.2.c., by striking out
581 the word “Secretary” and inserting in lieu thereof the word
582 “Director”;

583 On page thirty-six, subparagraph 10.2.d.1.B., by striking
584 out the word “Secretary” and inserting in lieu thereof the
585 word “Director”;

586 On page thirty-six, paragraph 10.2.d.2, by striking out the
587 word “Secretary” and inserting in lieu thereof the word
588 “Director”;

589 On page thirty-seven, subparagraph 10.2.e.1.G., by
590 striking out the word “Secretary” and inserting in lieu thereof
591 the word “Director”;

592 On page thirty-seven, subdivision 10.3.a., after the word
593 “the” by striking out the word “Secretary” and inserting in
594 lieu thereof the word “Director”;

595 On page thirty-seven, subdivision 10.3.a., after the word
596 “The” by striking out the word “Secretary” and inserting in
597 lieu thereof the word “Director”;

598 On page thirty-seven, subdivision 10.4.a., by striking out
599 the word “Secretary” and inserting in lieu thereof the word
600 “Director”;

601 On page thirty-seven, subdivision 10.5.a., by striking out
602 the word “Secretary” and inserting in lieu thereof the word
603 “Director”;

604 On page thirty-eight, subdivision 10.5.a., after the words
605 “advises the” by striking out the word “Secretary” and
606 inserting in lieu thereof the word “Director”;

607 On page thirty-eight, subdivision 10.5.a., after the words
608 “then the” by striking out the word “Secretary” and inserting
609 in lieu thereof the word “Director”;

610 On page thirty-eight, subdivision 10.5.b., after the words
611 “advises the” by striking out the word “Secretary” and
612 inserting in lieu thereof the word “Director”;

613 On page thirty-eight, subdivision 10.5.b., after the words
614 “resources, the” by striking out the word “Secretary” and
615 inserting in lieu thereof the word “Director”;

616 On page thirty-eight, subdivision 10.5.c., by striking out
617 the word “Secretary” and inserting in lieu thereof the word
618 “Director”;

619 On page thirty-eight, subdivision 11.1.d., by striking out
620 the word “Secretary” and inserting in lieu thereof the word
621 “Director”;

622 On page thirty-eight, subdivision 11.1.e., by striking out
623 the word “Secretary” and inserting in lieu thereof the word
624 “Director”;

625 On page forty, paragraph 12.3.a.3., by striking out the
626 word “Secretary” and inserting in lieu thereof the word
627 “Director”;

628 On page forty-one, subsection 13.1., by striking out the
629 word “Secretary” and inserting in lieu thereof the word
630 “Director”;

631 On page forty-one, paragraph 13.1.b.5. by striking out the
632 word “Secretary” and inserting in lieu thereof the word
633 “Director”;

634 On page forty-one, subdivision 13.1.c., by striking out the
635 word “Secretary” and inserting in lieu thereof the word
636 “Director”;

637 On page forty-one, subdivision 13.2.b., after the word
638 “The” by striking out the word “Secretary” and inserting in
639 lieu thereof the word “Director”;

640 On page forty-one, subdivision 13.2.b., after the word
641 “the” by striking out the word “Secretary” and inserting in
642 lieu thereof the word “Director”;

643 On page forty-two, subsection 14.1., by striking out the
644 word “Secretary” and inserting in lieu thereof the word
645 “Director”;

646 On page forty-two, subdivision 14.1.a., by striking out
647 the word “Secretary” and inserting in lieu thereof the word
648 “Director”;

649 On page forty-two, subdivision 14.1.b., by striking out
650 the word “Secretary” and inserting in lieu thereof the word
651 “Director”;

652 On page forty-two, subdivision 14.1.c., by striking out
653 the word “Secretary” and inserting in lieu thereof the word
654 “Director”;

655 On page forty-two, subdivision 14.2.a., by striking out
656 the word “Secretary” and inserting in lieu thereof the word
657 “Director”;

658 On page forty-two, subdivision 14.2.b., by striking out
659 the word “Secretary” and inserting in lieu thereof the word
660 “Director”;

661 On page forty-two, subdivision 14.2.c., after the words
662 “by the” by striking out the word “Secretary” and inserting in
663 lieu thereof the word “Director”;

664 On page forty-two, subdivision 14.2.c., after the words
665 “variance, the” by striking out the word “Secretary” and
666 inserting in lieu thereof the word “Director”;

667 On page forty-two, subdivision 15.1.a., by striking out
668 the word “Secretary” and inserting in lieu thereof the word
669 “Director”;

670 On page forty-three, subsection 15.2., by striking out the
671 word “Secretary” and inserting in lieu thereof the word
672 “Director”;

673 And,

674 On page forty-three, subdivision 15.2.c., by striking out
675 the word “Secretary” and inserting in lieu thereof the word
676 “Director”.

677 (y) The legislative rule filed in the State Register on the
678 twenty-seventh day of July, two thousand seven, authorized
679 under the authority of section seven-b, article eleven, chapter
680 twenty-two of this code, relating to the Department of
681 Environmental Protection (requirements governing water
682 quality standards, 47 CSR 2), is authorized, with the
683 following amendments:

684 On page two, by striking out subsection 2.20. “Waters of
685 special concern” in its entirety and renumbering the
686 remaining subsections;

687 On page four, by striking out subdivision 4.1.c. in its
688 entirety and renumbering the remaining subdivisions;

689 And,

690 On page four, newly designated 4.1.c. after the word
691 “State”, by changing the period to a comma and adding the
692 following: all Federally designated rivers under the “Wild
693 and Scenic Rivers Act”, 16 U.S.C. §1271 et seq.; all streams
694 and other bodies of water in state parks which are high
695 quality waters or naturally reproducing trout streams; waters
696 in national parks and forests which are high quality waters or

697 naturally reproducing trout streams; waters designated under
 698 the "National Parks and Recreation Act of 1978", as
 699 amended; and pursuant to subsection 7.1. of 60CSR5, those
 700 waters whose unique character, ecological or recreational
 701 value, or pristine nature constitutes a valuable national or
 702 state resource.;

703 And,

704 On pages sixteen through twenty-six by striking
 705 Appendix A and inserting in lieu thereof the following:

706 APPENDIX A

707 **CATEGORY B-2 - TROUT WATERS**

708 This list contains known trout waters and is not intended
 709 to exclude any waters which meet the definition in Section
 710 ~~2.20~~ 2.19.

711	<u>River Basin</u>	<u>County</u>	<u>Stream</u>
712	James River		
713	J	Monroe	South Fork Potts
714			Creek
715	Potomac River		
716	P	Jefferson	Town Run
717	P	"	Rocky Marsh Run
718	P	Berkeley	Opequon Creek
719	P	"	Tuscarora Creek
720			(Above Martinsburg)

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721	P	"	Middle Creek
722			(Above Route 30
723			Bridge)
724	P	"	Mill Creek
725	P	"	Hartland Run
726	P	"	Mill Run
727	P	"	Tillance Creek
728	P	Morgan	Meadow Branch
729	PS	Jefferson	Flowing Springs Run
730			(Above Halltown)
731	PS	"	Cattail Run
732	PS	"	Evitt's Run
733	PS	"	Big Bullskin Run
734	PS	"	Long Marsh Run
735	PC	Hampshire	Cold Stream
736	PC	"	Edwards Run and
737			Impoundment
738	PC	"	Dillons Run
739	PC	Hardy	Lost River
740	PC	"	Camp Branch
741	PC	"	Lower Cove Run

742	PC	"	Moores Run
743	PC	"	North River
744			(Above Rio)
745	PC	"	Waites Run
746	PC	"	Trout Run
747	PC	"	Trout Pond
748			(Impoundment)
749	PC	"	Warden Lake
750			(Impoundment)
751	PC	"	Rock Cliff Lake
752			(Impoundment)
753	PSB	Hampshire	Mill Creek
754	PSB	"	Mill Run
755	PSB	Hardy	Dumpling Creek
756	PSB	Grant-Pendleton	North Fork South
757			Branch
758	PSB	Grant	North Fork Lunice
759			Creek
760	PSB	"	South Fork Lunice
761			Creek
762	PSB	"	South Mill Creek
763			(Above Hiser)
764	PSB	"	Spring Run

1390		LEGISLATIVE RULES	[Ch. 135
765	PSB	Pendleton	Hawes Run
766			(Impoundment)
767	PSB	"	Little Fork
768	PSB	"	South Branch
769			(Above North Fork)
770	PSB	"	Senena Creek
771	PSB	"	Laurel Fork
772	PSB	"	Big Run
773	Potomac River		
774	PNB	Mineral	North Fork Patterson
775			Creek
776	PNB	"	Fort Ashby
777			(Impoundment)
778	PNB	"	New Creek
779	PNB	"	New Creek Dam 14
780			(Impoundment)
781	PNB	"	Mill Creek
782			(Above Markwood)
783	Monongahela River		
784	M	Monongalia-	Whiteday Creek
785		Marion	(Above Smithtown)
786	MC	Monongalia	Morgan Run

787	MC	"	Coopers Rock
788			(Impoundment)
789	MC	"	Blaney Hollow
790	MC	Preston	Laurel Run
791	MC	"	Elsey Run
792	MC	"	Saltlick Creek
793	MC	"	Buffalo Creek
794	MC	"	Wolf Creek
795	MC	Tucker	Clover Run
796	MC	"	Elklick Run
797	MC	"	Horseshoe Run
798	MC	"	Maxwell Run
799	MC	"	Red Creek
800	MC	"	Slip Hill Mill Branch
801	MC	"	Thomas Park
802			(Impoundment)
803	MC	"	Blackwater River
804			(Above Davis)
805	MC	"	Blackwater River
806			(Below Davis)
807			
808	MC	Randolph	Camp Five Run

1392	LEGISLATIVE RULES			[Ch. 135
809 810	MC	"	Dry Fork (Above Otter Creek)	
811	MC	"	Glady Fork	
812	MC	"	Laurel Fork	
813 814	MC	"	Gandy Creek (Above Whitmer)	
815 816 817 818	MC	"	East Fork Glady Fork (Above C & P Compressor Station)	
819 820 821	MC	"	Randolph Shavers Fork (Above Little Black Fork)	
822	MC	"	Three Spring Run	
823 824	MC	"	Spruce Knob Lake (Impoundment)	
825	MW	Harrison	Dog Run (Pond)	
826	MW	Lewis	Stonecoal	
827 828	MT	Barbour	Brushy Fork (Above Valley Furnace)	
829 830	MT	"	Teter Creek Lake Impoundment)	
831	MT	"	Mill Run	
832 833 834	MT	Taylor-Barbour	Tygart Lake Tailwaters (Above Route 119 Bridge)	

835	MT	Preston	Roaring Creek
836			(Above Little Lick
837			Branch)
838	MT	Randolph	Tygart River (Above
839			Huttonsville)
840	MT	"	Elkwater Fork
841	MT	"	Big Run
842	MTB	Upshur-Randolph	Right Fork
843		Lewis	Buckhannon River
844	MTB	Upshur	Buckhannon River
845			(Above Beans Mill)
846	MTB	Upshur	French Creek
847	Monongahela River		
848	MTB	Upshur-Randolph	Left Fork Right Fork
849	MTN	Upshur	Right Fork Middle
850			Fork River
851	MTM	Randolph	Middle Fork River
852			(Above Cassity)
853	MY	Preston	Rhine Creek
854	Little Kanawha River		
855	LK	Upshur	Left Fork-Right
856			Fork (Little
857			Kanawha River)

1394		LEGISLATIVE RULES	[Ch. 135
858	LK	Upshur-Lewis	Little Kanawha River
859			(Above Wildcat)
860	Kanawha River		
861	KE	Braxton	Sutton Reservoir
862	KE	"	Sutton Lake
863			Tailwaters
864			(Above Route 38/5
865			Bridge)
866	KE	Webster	Back Fork
867	KE	"	Desert Fork
868	KE	"	Fall Run
869	KE	"	Laurel Fork
870	KE	"	Left Fork Holly
871			River
872	KE	"	Sugar Creek
873	KE	"	Elk River (Above
874			Webster Springs)
875	KC	Raleigh	Stephens Lake
876			(Impoundment)
877	KC	"	Marsh Fork (Above
878			Sundial)
879	KG	Nicholas	Summersville
880			Reservoir
881			(Impoundment)

882	KG	"	S u m m e r s v i l l e
883			Tailwaters (Above
884			Collison Creek)
885	KG	Nicholas	Deer Creek
886	KG	Randolph-	Gauley River
887		Webster	(Above Moust
888			Coal Tipple)
889	KG	Fayette	Glade Creek
890	KG	Nicholas	Hominy Creek
891	KG	"	Anglins Creek
892	KG	Greenbrier	Big Clear Creek
893	KG	"	Little Clear Creek
894			and Laurel Run
895	KG	"	Meadow Creek
896	KG	Fayette	Wolf Creek
897	KG	Nicholas	Cherry River
898	KG	Greenbrier-Nicholas	Laurel Creek
899	KG	"	North Fork Cherry
900			River
901	KG	Greenbrier	Summit Lake
902			(Impoundment)
903	KG	Greenbrier-Nicholas	South Fork Cherry
904			River

905 Kanawha River

906	KGC	Pocahontas-Webster-	Cranberry River
907		Nicholas	
908	KGC	Pocahontas	South Fork Cranberry
909			River
910	KGW	Pocahontas	Tea Creek
911	KGW	Pocahontas-Webster	Williams River
912			(Above Dyer)
913	KN	Raleigh	Glade Creek
914	KN	Summers	Meadow Creek
915	KN	Fayette	Mill Creek
916	KN	"	Laurel Creek (Above
917			Cotton Hill)
918	KN	Raleigh	Pinch Creek
919	KN	Monroe	Rich Creek
920	KN	"	Turkey Creek
921	KN	Fayette	Dunloup Creek
922			(Downstream from
923			Harvey Sewage
924			Treatment Plant)
925	KN	Mercer	East River (Above
926			Kelleysville)
927	KN	"	Pigeon Creek

928	KN	Monroe	Laurel Creek
929 930	KNG	Monroe	Kitchen Creek (Above Gap Mills)
931	KNG	Greenbrier	Culverson Creek
932	KNG	"	Milligan Creek
933 934 935	KNG	Greenbrier-Monroe	Second Creek (Rt. 219 Bridge to Nickell's Mill)
936 937	KNG	Greenbrier	North Fork Anthony Creek
938	KNG	"	Spring Creek
939 940	KNG	"	Anthony Creek (Above Big Draft)
941	KNG	Pocahontas	Watoga Lake
942	KNG	"	Beaver Creek
943	KNG	"	Knapp's Creek
944	KNG	"	Hills Creek
945 946 947	KNG	"	North Fork Deer Creek (Above Route 28/5)
948	KNG	"	Deer Creek
949	KNG	"	Sitlington Creek
950	KNG	"	Stoney Creek

1398		LEGISLATIVE RULES	[Ch. 135
951	KNG	"	Swago Creek
952	KNG	"	Buffalo Fork
953			(Impoundment)
954	KNG	"	Seneca
955			(Impoundment)
956	KNG	"	Greenbrier River
957			(Above Hosterman)
958	KNG	"	West Fork-Greenbrier
959			River (Above the
960			impoundment at the
961			tannery)
962	KNG	"	Little River-East Fork
963	KNG	"	Little River-West Fork
964	KNG	"	Five Mile Run
965	KNG	"	Mullenax Run
966	KNG	"	Abes Run
967	KNB	Mercer	Marsh Fork
968	KNB	"	Camp Creek
969	OG	Wyoming	Pinnacle creek
970	BST	McDowell	Dry Fork (Above
971			Canebrake)
972		(z) The legislative rule filed in the State Register on the	
973		twenty-seventh day of July, two thousand seven, authorized	

974 under the authority of section seven-b, article eleven, chapter
975 twenty-two of this code, relating to the Department of
976 Environmental Protection (antidegradation implementation
977 procedures, 60 CSR 5), is authorized with the amendment set
978 forth below:

979 On page two, subsection 3.2. by striking out the words
980 “Tier 2.5 or”;

981 On page three, by striking out subdivision 3.5.a. in its
982 entirety and by renumbering the remaining subdivisions;

983 On page three, new subdivision 3.5.a., after the words
984 “Wilderness Area” by inserting the words “or otherwise
985 included in 47CSR2-4.1.c.”;

986 On page three, new subdivision 3.5.b., after the words
987 “Wilderness Area” by striking out the words “not listed
988 pursuant to subsection 8.2. and not listed in Appendix A of
989 this rule” and inserting in lieu thereof, the words “or
990 otherwise included in 47CSR2-4.1.c. or listed pursuant to
991 subsection 7.1. of this rule”;

992 On page three, new subdivision 3.5.d. by striking out the
993 words “Tier 2.5 or”;

994 On page three, subsection 3.7. by striking out the words
995 “Tier 2.5 or”;

996 On page four, subsection 3.8., by striking out the words
997 “Tier 2.5 or”;

998 On pages nine through eleven, by striking out section six
999 in its entirety and renumbering the remaining sections;

1000 On page eleven, subsection 7.2., by striking out
1001 “47CSR2-4.1.d.” and inserting in lieu thereof the words
1002 “47CSR2-4.1.c.”;

1003 On page thirteen, by striking out the section caption and
1004 inserting in lieu thereof a new section caption to read as
1005 follows:

§60-5-7. Designation of Tier 3 Waters.;

1 On pages thirteen and fourteen, by striking out section
2 8.1. in its entirety and renumbering the remaining subsection;

3 On page fourteen, new subsection 7.2.a.1., following the
4 words “nominated segment.” by striking out the word
5 “Where” and inserting in lieu thereof, the following: When
6 a good faith effort to notify individual property owners has
7 failed, and”.

8 On page fifteen, subsection 9.3. by striking out the words
9 “2.5.”;

10 On page fifteen, subsection 9.6, after the word “Board”,
11 by striking out the colon and the remainder of the subsection;

12 On pages sixteen through twenty-one by striking out
13 Appendix A in its entirety;

14 And,

15 On page twenty-two by striking out the caption and
16 inserting in lieu thereof the caption “**APPENDIX A**”.

§64-3-2. Solid Waste Management Board.

1 The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand seven, authorized
3 under the authority of section nine-a, article four, chapter
4 twenty-two-c of this code, modified by the Solid Waste
5 Management Board to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the fifth day of December, two thousand seven,

8 relating to the Solid Waste Management Board (performance
9 measures and review standards for solid waste authorities
10 operating commercial solid waste facilities, 54 CSR 6), is
11 authorized.



CHAPTER 136

**(Com. Sub. for S.B. 398 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to

water wells; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to water well design standards; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospice licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the newborn screening system; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section four, article one, chapter
4 sixteen of this code, modified by the Department of Health
5 and Human Resources to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the seventh day of December, two
8 thousand seven, relating to the Department of Health and
9 Human Resources (food establishments, 64 CSR 17), is
10 authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-seventh day of July, two thousand seven, authorized
13 under the authority of section four, article one, chapter
14 sixteen of this code, modified by the Department of Health
15 and Human Resources to meet the objections of the
16 Legislative Rule-Making Review Committee and refiled in
17 the State Register on the nineteenth day of December, two
18 thousand seven, relating to the Department of Health and
19 Human Resources (water wells, 64 CSR 19), is authorized.

20 (c) The legislative rule filed in the State Register on the
21 twenty-seventh day of July, two thousand seven, authorized
22 under the authority of section four, article one, chapter
23 sixteen of this code, modified by the Department of Health
24 and Human Resources to meet the objections of the
25 Legislative Rule-Making Review Committee and refiled in
26 the State Register on the seventh day of December, two
27 thousand seven, relating to the Department of Health and
28 Human Resources (water well design standards, 64 CSR 46),
29 is authorized.

30 (d) The legislative rule filed in the State Register on the
31 twenty-seventh day of July, two thousand seven, authorized
32 under the authority of section five, article five-I, chapter
33 sixteen of this code, modified by the Department of Health
34 and Human Resources to meet the objections of the
35 Legislative Rule-Making Review Committee and refiled in
36 the State Register on the sixth day of December, two
37 thousand seven, relating to the Department of Health and
38 Human Resources (hospice licensure, 64 CSR 54), is
39 authorized.

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

47 thousand seven, relating to the Department of Health and
48 Human Resources (regulation of opioid treatment programs,
49 64 CSR 90), is authorized.

50 (f) The legislative rule filed in the State Register on the
51 twenty-seventh day of July, two thousand seven, authorized
52 under the authority of section three, article twenty-two,
53 chapter sixteen of this code, modified by the Department of
54 Health and Human Resources to meet the objections of the
55 Legislative Rule-Making Review Committee and refiled in
56 the State Register on the seventh day of December, two
57 thousand seven, relating to the Department of Health and
58 Human Resources (newborn screening system, 64 CSR 91),
59 is authorized.

60 (g) The legislative rule filed in the State Register on the
61 twenty-seventh day of July, two thousand seven, authorized
62 under the authority of section three, article eleven, chapter
63 sixteen of this code, modified by the Department of Health
64 and Human Resources to meet the objections of the
65 Legislative Rule-Making Review Committee and refiled in
66 the State Register on the seventh day of December, two
67 thousand seven, relating to the Department of Health and
68 Human Resources (clandestine drug laboratory remediation,
69 64 CSR 92), is authorized.

70 (h) The legislative rule filed in the state register on the
71 twenty-eighth day of July, two thousand six, authorized under
72 the authority of section fourteen, article four-C, chapter
73 sixteen of this code, authorized for promulgation by the
74 Legislature on the tenth day of March two thousand seven,
75 and refiled in the state register on the eighteenth day of April,
76 two thousand seven, relating to the Department of Health and
77 Human Resources (emergency medical services, 64 CSR 48),
78 is authorized with the following amendment:

79 On page eighteen, by striking out all of subparagraph
80 9.1.a.2.B. and renumbering the remaining subparagraphs.

CHAPTER 137

**(Com. Sub. for H.B. 4206 - By Delegates Brown, Miley,
Burdiss, Talbott and Overington)**

[Passed March 5, 2008; in effect from passage.]

[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Fire Marshal to promulgate a legislative rule relating to the supervision of fire protection work; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to a furlough program for regional jails; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to a work program for regional jail

inmates; authorizing the State Police to promulgate a legislative rule relating to cadet selection; authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Career Progression System; and authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR THE DEPARTMENT
OF MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE
LEGISLATIVE RULES.**

§64-6-1. State Fire Marshal.

§64-6-2. Regional Jail and Correctional Facility Authority.

§64-6-3. State Police.

§64-6-1. State Fire Marshal.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand seven, authorized
3 under the authority of section four, article three-d, chapter
4 twenty-nine of this code, modified by the State Fire Marshal
5 to meet the objections of the legislative rule-making review
6 committee and refiled in the State Register on the sixteenth
7 day of January, two thousand eight, relating to the State Fire
8 Marshal (supervision of fire protection work, 103 CSR 3), is
9 authorized with the following amendment:

10 On page one, by striking out subsections 3.4 and 3.5 in
11 their entirety and renumbering the remaining subsections
12 accordingly;

13 On page two, by striking out subsections 3.11, 3.12 and
14 3.13 in their entirety and renumbering the remaining
15 subsections accordingly;

16 On page five, by striking out subsections 7.2 through 7.6
17 in their entirety and renumbering the remaining subsections
18 accordingly; and

19 On page nine, by striking out subsections 13.3 through
20 13.7 in their entirety and renumbering the subsection
21 accordingly.

§64-6-2. Regional Jail and Correctional Facility Authority.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section twenty-nine, article twenty,
4 chapter thirty-one of this code, modified by the Regional Jail
5 and Correctional Facility Authority to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the State Register on the third day of January, two thousand
8 eight, relating to the Regional Jail and Correctional Facility
9 Authority (furlough program for regional jails, 94 CSR 6), is
10 authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-seventh day of July, two thousand seven, authorized
13 under the authority of section thirty-one, article twenty,
14 chapter thirty-one of this code, modified by the Regional Jail
15 and Correctional Facility Authority to meet the objections of
16 the legislative rule-making review committee and refiled in
17 the State Register on the third day of January, two thousand
18 eight, relating to the Regional Jail and Correctional Facility
19 Authority (work program for regional jail inmates, 94 CSR
20 8), is authorized.

§64-6-3. State Police.

1 (a) The legislative rule filed in the State Register on the
2 seventeenth day of July, two thousand seven, authorized
3 under the authority of section twenty-five, article two,
4 chapter fifteen of this code, modified by the State Police to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the State Register on the twenty-
7 ninth day of August, two thousand seven, relating to the State
8 Police (cadet selection, 81 CSR 2), is authorized.

9 (b) The legislative rule filed in the State Register on the
10 twenty-fifth day of June, two thousand seven, authorized
11 under the authority of section five, article two, chapter fifteen
12 of this code, modified by the State Police to meet the
13 objections of the legislative rule-making review committee
14 and refiled in the State Register on the eleventh day of
15 October, two thousand seven, relating to the State Police
16 (West Virginia State Police Career Progression System, 81
17 CSR 3), is authorized with the amendments set forth below:

18 On page four, subdivision 4.1.1.a, by striking “seven (7)”
19 and inserting in lieu thereof the words “nine (9)”;

20 On page four, subdivision 4.1.1.b, following the word
21 “sergeants” on the first line of the subdivision by inserting a
22 comma and the words “that have at least one year in the
23 present rank” and a comma;

24 On page four, subdivision 4.1.1.c, following the word
25 “sergeants” by inserting a comma and the words “that have
26 at least one year in the present rank” and a comma;

27 On page four, paragraph 4.1.1.c, by deleting the
28 following words: “Effective July 1, 2012 and continuing
29 thereafter, a first sergeant must possess a post-secondary
30 education bachelor’s degree in order to be eligible for

31 promotion to the rank of second lieutenant or first
32 lieutenant.”;

33 On page four, subdivision 4.2.2.d, following the words
34 “bachelor’s degree - “ by striking the words “two (2)” and
35 inserting in lieu thereof “one (1)”;

36 On page four, subdivision 4.2.2.d, following the words
37 “master’s degree - “ by striking the words “three(3)” and
38 inserting in lieu thereof “one and one half (1.5)”;

39 On page four, subdivision 4.2.2.d, following the words
40 “PHD“ by striking the words “four (4)” and inserting in lieu
41 thereof “two (2)”;

42 On page six, following subdivision 4.5.2, by inserting
43 “The 34% removed members shall be done at the end of the
44 ordered promotional list or prior to the oral evaluation
45 whichever the Superintendent chooses.”

46 And,

47 On page eleven, On page four, subdivision 7.1.5. by
48 deleting the following words: “Effective July 1, 2012 and
49 continuing thereafter, a member must possess a post-
50 secondary education bachelor’s degree in order to be eligible
51 for reclassification to administrative support specialist VII or
52 VIII.”.

53 (c) The legislative rule filed in the State Register on the
54 twenty-fifth day of June, two thousand seven, authorized
55 under the authority of section twenty-five, article two,
56 chapter fifteen of this code, relating to the State Police (West
57 Virginia State Police professional standards investigations,
58 employee rights, early identification system, psychological
59 assessment and progressive discipline, 81 CSR 10), is
60 authorized.



CHAPTER 138

**(Com. Sub. for S.B. 417 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to retail licensee operations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Insurance Commissioner to promulgate a legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental

health parity; authorizing the Insurance Commissioner to promulgate a legislative rule relating to recognition of preferred mortality tables for use in determining minimum reserve liabilities; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the replacement of life insurance policies and annuity contracts; authorizing the Insurance Commissioner to promulgate a legislative rule relating to military sales practices; authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to life insurance disclosures; authorizing the Insurance Commissioner to promulgate a legislative rule relating to life insurance illustrations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to examiners and examinations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the licensing and conduct of insurance producers, agencies and solicitors; authorizing the Insurance Commissioner to promulgate a legislative rule relating to fingerprinting requirements for applications for an insurance producer license; authorizing the Insurance Commissioner to promulgate a legislative rule relating to advertisement of life insurance and annuities; authorizing the Lottery Commission to promulgate a legislative rule relating to racetrack table games; and authorizing the State Tax Division to promulgate a legislative rule relating to the exchange of information agreement between the Commissioner of the Tax Division of the Department of Revenue and the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs and the Office of the Governor.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. Alcohol Beverage Control Commission.

§64-7-2. Insurance Commissioner.

§64-7-3. Lottery Commission.

§64-7-4. State Tax Department.

§64-7-1. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on the
2 twenty-sixth day of July, two thousand seven, authorized
3 under the authority of section six, article three-a, chapter
4 sixty of this code, modified by the Alcohol Beverage Control
5 Commission to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-second day of January, two thousand eight,
8 relating to the Alcohol Beverage Control Commission (retail
9 licensee operations, 175 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-sixth day of July, two thousand seven, authorized
12 under the authority of section twenty-three, article eight,
13 chapter sixty of this code, modified by the Alcohol Beverage
14 Control Commission to meet the objections of the Legislative
15 Rule-Making Review Committee and refiled in the State
16 Register on the twenty-second day of January, two thousand
17 eight, relating to the Alcohol Beverage Control Commission
18 (farm wineries, 175 CSR 3), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-sixth day of July, two thousand seven, authorized
21 under the authority of section six, article three-a, chapter
22 sixty of this code, modified by the Alcohol Beverage Control
23 Commission to meet the objections of the Legislative Rule-
24 Making Review Committee and refiled in the State Register
25 on the twenty-second day of January, two thousand eight,
26 relating to the Alcohol Beverage Control Commission (sale
27 of wine, 175 CSR 4), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section ten, article two, chapter thirty-
4 three of this code, modified by the Insurance Commissioner
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 seventh day of December, two thousand seven, relating to the
8 Insurance Commissioner (guaranteed loss ratios as applied to
9 individual sickness and accident insurance policies, 114 CSR
10 31), is authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-seventh day of July, two thousand seven, authorized
13 under the authority of section ten, article two, chapter thirty-
14 three of this code, relating to the Insurance Commissioner
15 (mental health parity, 114 CSR 64), is authorized.

16 (c) The legislative rule filed in the State Register on the
17 twenty-seventh day of July, two thousand seven, authorized
18 under the authority of section ten, article two, chapter thirty-
19 three of this code, modified by the Insurance Commissioner
20 to meet the objections of the Legislative Rule-Making
21 Review Committee and refiled in the State Register on the
22 seventh day of December, two thousand seven, relating to the
23 Insurance Commissioner (recognition of preferred mortality
24 tables for use in determining minimum reserve liabilities, 114
25 CSR 69A), is authorized.

26 (d) The legislative rule filed in the State Register on the
27 twenty-seventh day of July, two thousand seven, authorized
28 under the authority of section ten, article two, chapter thirty-
29 three of this code, modified by the Insurance Commissioner
30 to meet the objections of the Legislative Rule-Making
31 Review Committee and refiled in the State Register on the
32 seventh day of December, two thousand seven, relating to the
33 Insurance Commissioner (replacement of life insurance
34 policies and annuity contracts, 114 CSR 8), is authorized.

35 (e) The legislative rule filed in the State Register on the
36 twenty-seventh day of July, two thousand seven, authorized
37 under the authority of section ten, article two, chapter thirty-
38 three of this code, modified by the Insurance Commissioner
39 to meet the objections of the Legislative Rule-Making
40 Review Committee and refiled in the State Register on the
41 seventh day of December, two thousand seven, relating to the
42 Insurance Commissioner (military sales practices, 114 CSR
43 82), is authorized.

44 (f) The legislative rule filed in the State Register on the
45 twenty-seventh day of July, two thousand seven, authorized
46 under the authority of section ten, article two, chapter thirty-
47 three of this code, modified by the Insurance Commissioner
48 to meet the objections of the Legislative Rule-Making
49 Review Committee and refiled in the State Register on the
50 seventh day of December, two thousand seven, relating to the
51 Insurance Commissioner (suitability in annuity transactions,
52 114 CSR 11B), is authorized.

53 (g) The legislative rule filed in the State Register on the
54 twenty-seventh day of July, two thousand seven, authorized
55 under the authority of section ten, article two, chapter thirty-
56 three of this code, modified by the Insurance Commissioner
57 to meet the objections of the Legislative Rule-Making
58 Review Committee and refiled in the State Register on the
59 seventh day of December, two thousand seven, relating to the
60 Insurance Commissioner (life insurance disclosures, 114
61 CSR 11A), is authorized.

62 (h) The legislative rule filed in the State Register on the
63 twenty-seventh day of July, two thousand seven, authorized
64 under the authority of section ten, article two, chapter thirty-
65 three of this code, modified by the Insurance Commissioner
66 to meet the objections of the Legislative Rule-Making
67 Review Committee and refiled in the State Register on the
68 seventh day of December, two thousand seven, relating to the
69 Insurance Commissioner (life insurance illustrations, 114
70 CSR 11C), is authorized with the following amendment:

71 On page 17, section 11, by striking section 11 in its
72 entirety and inserting in lieu thereof the following:

§114-11C-11. Failure to comply.

1 A violation of paragraphs 5.2 or 5.3, section 5 of this rule
2 by an insurer constitutes a statement or omission which
3 misrepresents the benefits, advantages, conditions or terms of
4 a life insurance policy.?

5 (i) The legislative rule filed in the State Register on the
6 twenty-seventh day of July, two thousand seven, authorized
7 under the authority of section ten, article two, chapter thirty-
8 three of this code, relating to the Insurance Commissioner
9 (examiners and examinations, 114 CSR 15), is authorized.

10 (j) The legislative rule filed in the State Register on the
11 twenty-seventh day of July, two thousand seven, authorized
12 under the authority of section ten, article two, chapter thirty-
13 three of this code, relating to the Insurance Commissioner
14 (licensing and conduct of insurance producers, agencies and
15 solicitors, 114 CSR 2), is authorized.

16 (k) The legislative rule filed in the State Register on the
17 twenty-seventh day of July, two thousand seven, authorized
18 under the authority of section ten, article two, chapter thirty-
19 three of this code, modified by the Insurance Commissioner
20 to meet the objections of the Legislative Rule-Making
21 Review Committee and refiled in the State Register on the
22 seventh day of December, two thousand seven, relating to the
23 Insurance Commissioner (fingerprinting requirements for
24 applications for insurance producer license, 114 CSR 2A), is
25 authorized.

26 (l) The legislative rule filed in the State Register on the
27 twenty-seventh day of July, two thousand seven, authorized
28 under the authority of section ten, article two, chapter thirty-
29 three of this code, modified by the Insurance Commissioner
30 to meet the objections of the Legislative Rule-Making

31 Review Committee and refiled in the State Register on the
32 seventh day of December, two thousand seven, relating to the
33 Insurance Commissioner (advertisement of life insurance and
34 annuities, 114 CSR 11), is authorized.

§64-7-3. Lottery Commission.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section four, article twenty-two-c,
4 chapter twenty-nine of this code, modified by the Lottery
5 Commission to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twenty-sixth day of December, two thousand seven,
8 relating to the Lottery Commission (racetrack table games,
9 179 CSR 8), is authorized with the following amendments:

10 On page twelve, by striking out subsection 2.65 in its
11 entirety;

12 On page fifteen, by striking subsection 3.11 in its entirety
13 and renumbering the subsequent subsections accordingly;

14 On page seventeen, by striking out section 179-8-9 in its
15 entirety and renumbering the subsequent sections
16 accordingly;

17 And,

18 On page ninety-four, section one hundred ten, by striking
19 out the words 'section eleven' and inserting in lieu thereof
20 the words 'sections one hundred fourteen through one
21 hundred twenty-six'.

§64-7-4. State Tax Department.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section five-s, article ten, chapter

4 eleven of this code, modified by the State Tax Department to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 ninth day of December, two thousand seven, relating to the
8 State Tax Department (exchange of information agreement
9 between the Commissioner of the Tax Division of the
10 Department of Revenue and the Commissioner of the
11 Division of Labor of the Department of Commerce, the
12 Commissioner of the Insurance Commission of the
13 Department of Revenue, the Commissioner of the Division
14 of Motor Vehicles of the Department of Transportation, the
15 Commissioner of the Bureau of Employment Programs and
16 the Office of the Governor, 110 CSR 50D), is authorized.



CHAPTER 139

**(Com. Sub. for H.B. 4244 - By Delegates Brown, Miley,
Burdiss, Talbott and Overington)**

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Transportation; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate

certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the construction and reconstruction of state roads; authorizing the Commissioner of Highways to promulgate a legislative rule relating to traffic and safety rules; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the disclosure of information from the files of the division.

Be it enacted by the Legislature of West Virginia:

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

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

§64-8-1. Division of Highways.

§64-8-2. Division of Motor Vehicles.

§64-8-1. Division of Highways.

- 1 (a) The legislative rule filed in the State Register on the
- 2 twenty-seventh day of July, two thousand seven, authorized
- 3 under the authority of section eight, article two-a, chapter
- 4 seventeen, of this code, modified by the Commissioner of
- 5 Highways to meet the objections of the Legislative Rule-

6 Making Review Committee and refiled in the State Register
7 on the twenty-sixth day of December, two thousand seven,
8 relating to the Commissioner of Highways (construction and
9 reconstruction of state roads, 157 CSR 3), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-seventh day of July, two thousand seven, authorized
12 under the authority of section eight, article two-a, chapter
13 seventeen, of this code, relating to the Commissioner of
14 Highways (traffic and safety rules, 157 CSR 5), is authorized.

15 (c) The legislative rule filed in the State Register on the
16 twenty-seventh day of July, two thousand seven, authorized
17 under the authority of section eight, article two-a, chapter
18 seventeen, of this code, relating to the Commissioner of
19 Highways (use of state road rights-of-way and adjacent areas,
20 157 CSR 6), is authorized with the following amendment:

21 On page ten, paragraph 3.8.d.3, after the words “W. Va.
22 Code”, by striking the citation “§17-4-17b(d)(4)” and
23 inserting in lieu thereof the following: “§17-4-17b(d)”.

24 (d) The legislative rule filed in the State Register on the
25 twenty-seventh day of July, two thousand seven, authorized
26 under the authority of section seven, article eighteen, chapter
27 twenty-two, of this code, relating to the Commissioner of
28 Highways (transportation of hazardous wastes upon the roads
29 and highways, 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand seven, authorized
3 under the authority of section five, article two, chapter
4 seventeen-b, of this code, modified by the Division of Motor
5 Vehicles to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the twentieth day of December, two thousand seven,
8 relating to the Division of Motor Vehicles (examination and

9 issuance of driver's licences, 91 CSR 4), is authorized with
10 the following amendment:

11 On page 3, paragraph 3.9, after the words "address of the
12 applicant's", by striking the word "principle" and inserting in
13 lieu thereof the word "principal";

14 And,

15 On page 3, by striking out subdivision 3.9.a. in its
16 entirety, and inserting in lieu thereof the following:

17 "3.9.a. An applicant who can verify that his or her
18 principal residence is physically located in West Virginia but
19 who has no fixed or designated address to which mail can be
20 delivered by the United States Postal Service and who must
21 use another address for purposes of receiving mail;"

22 (b) The legislative rule filed in the State Register on the
23 first day of November, two thousand seven, authorized under
24 the authority of section twelve, article two-a, chapter
25 seventeen-b, of this code, relating to the Division of Motor
26 Vehicles (the disclosure of information from the files of
27 Division of Motor Vehicles, 91 CSR 8), is authorized.



CHAPTER 140

**(Com. Sub. for S.B. 349 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of
West Virginia, 1931, as amended, relating generally to the

promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Acupuncture to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing the Board of Acupuncture to promulgate a legislative rule relating to continuing education requirements; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the fee structure for the Pesticide Control Act of 1990; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the West Virginia Plant Pest Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing the State Auditor to promulgate a legislative rule relating to standards for requisitions for payment issued to state officers on the Auditor; authorizing the State Auditor to promulgate a legislative rule relating to the State Purchasing Card Program; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the board; authorizing the State Election Commission to promulgate a legislative rule relating to corporate political activity; authorizing the State Election Commission to promulgate a legislative rule relating to the regulation of campaign finance; authorizing the State Election Commission to promulgate a

legislative rule relating to election expenditures; authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holder and funeral establishment requirements; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to the board; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to the board; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to continuing education; authorizing the Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to a standard of ethics; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatrists; authorizing the Board of Medicine to promulgate a legislative rule relating to collaborative pharmacy practice; authorizing the Board of Medicine to promulgate a legislative rule relating to certification, disciplinary and complaint procedures, continuing education and radiologist assistants; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Pharmaceutical Cost Management Council to promulgate a legislative rule relating to prescription drug advertising expense reporting; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to fees for surveyors and surveying firms; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to standards for the practice of surveying in West Virginia; authorizing the Public Service Commission to promulgate a legislative rule relating to emergency telephone service; authorizing the Secretary of State to promulgate a legislative rule relating to the use of digital signatures, state certificate authority and the state repository; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to

promulgate a legislative rule relating to the licensure of speech-pathology and audiology; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

- §64-9-1. Board of Acupuncture.
- §64-9-2. Commissioner of Agriculture.
- §64-9-3. State Auditor.
- §64-9-4. Board of Dental Examiners.
- §64-9-5. State Election Commission.
- §64-9-6. Board of Funeral Service Examiners.
- §64-9-7. Board of Hearing Aid Dealers.
- §64-9-8. Massage Therapy Licensure Board.
- §64-9-9. Medical Imaging and Radiation Therapy Technology Board of Examiners.
- §64-9-10. Board of Medicine.
- §64-9-11. Nursing Home Administrators Licensing Board.
- §64-9-12. Pharmaceutical Cost Management Council.
- §64-9-13. Board of Professional Surveyors.
- §64-9-14. Public Service Commission.
- §64-9-15. Secretary of State.
- §64-9-16. Board of Examiners for Speech-Language Pathology and Audiology.
- §64-9-17. Board of Veterinary Medicine.

§64-9-1. Board of Acupuncture.

- 1 (a) The legislative rule filed in the State Register on the
- 2 seventeenth day of July, two thousand seven, authorized
- 3 under the authority of section seven, article thirty-six, chapter
- 4 thirty of this code, modified by the Board of Acupuncture to
- 5 meet the objections of the Legislative Rule-Making Review
- 6 Committee and refiled in the State Register on the sixth day
- 7 of November, two thousand seven, relating to the Board of
- 8 Acupuncture (disciplinary and complaint procedures for

9 acupuncturists, 32 CSR 7), is authorized with the following
10 amendments:

11 On page one, by striking out subsection 3.7. and
12 renumbering the remaining subsection;

13 And,

14 On page seven, section five, by striking out the section
15 caption and inserting in lieu thereof a new section caption, to
16 read as follows:

§32-7-5. Complaint Disposition.’

1 (b) The legislative rule filed in the State Register on the
2 seventeenth day of July, two thousand seven, authorized
3 under the authority of section seven, article thirty-six, chapter
4 thirty of this code, modified by the Board of Acupuncture to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the sixth day
7 of November, two thousand seven, relating to the Board of
8 Acupuncture (continuing education requirements, 32 CSR 9),
9 is authorized with the following amendment:

10 On page two, subsection 5.2., after the word ‘shall’ by
11 inserting the word ‘assign’;

12 And,

13 On page three, subsection 7.1., by striking out the word
14 “fourty-eight” and inserting in lieu thereof the word “forty-
15 eight”.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of July, two thousand seven, authorized

3 under the authority of section four, article sixteen-a, chapter
4 nineteen of this code, relating to the Commissioner of
5 Agriculture (fee structure for the Pesticide Control Act of
6 1990, 61 CSR 12), is authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-ninth day of June, two thousand seven, authorized
9 under the authority of section five, article two-c, chapter
10 nineteen of this code, modified by the Commissioner of
11 Agriculture to meet the objections of the Legislative Rule-
12 Making Review Committee and refiled in the State Register
13 on the twenty-eighth day of August, two thousand seven,
14 relating to the Commissioner of Agriculture (auctioneers, 61
15 CSR 11B), is authorized with the following amendment:

16 On page one, subsection 3.1., by striking out the word
17 ‘applicant’s’ and inserting in lieu thereof the word
18 ‘applicant’.

19 (c) The legislative rule filed in the State Register on the
20 twenty-seventh day of July, two thousand seven, authorized
21 under the authority of section three, article twelve, chapter
22 nineteen of this code, modified by the Commissioner of
23 Agriculture to meet the objections of the Legislative Rule-
24 Making Review Committee and refiled in the State Register
25 on the twenty-seventh day of August, two thousand seven,
26 relating to the Commissioner of Agriculture (West Virginia
27 Plant Pest Act, 61 CSR 14), is authorized.

28 (d) The legislative rule filed in the State Register on the
29 twenty-sixth day of June, two thousand seven, authorized
30 under the authority of section three, article two-b, chapter
31 nineteen of this code, relating to the Commissioner of
32 Agriculture (inspection of meat and poultry, 61 CSR 16), is
33 authorized.

34 (e) The legislative rule filed in the State Register on the
35 twenty-fourth day of July, two thousand seven, authorized

36 under the authority of section ten, article eleven-b, chapter
37 nineteen of this code, relating to the Commissioner of
38 Agriculture (frozen desserts and imitation frozen desserts, 61
39 CSR 4B), is authorized.

§64-9-3. State Auditor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand seven, authorized
3 under the authority of section ten, article three, chapter
4 twelve of this code, modified by the State Auditor to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth
7 day of October, two thousand seven, relating to the State
8 Auditor (standards for requisitions for payment issued to
9 state officers on the auditor, 155 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-fifth day of July, two thousand seven, authorized
12 under the authority of section ten-a, article three, chapter
13 twelve of this code, modified by the State Auditor to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on the eighteenth
16 day of October, two thousand seven, relating to the State
17 Auditor (State Purchasing Card Program, 155 CSR 7), is
18 authorized.

§64-9-4. Board of Dental Examiners.

1 The legislative rule filed in the State Register on the
2 nineteenth day of July, two thousand seven, authorized under
3 the authority of section six, article four, chapter thirty of this
4 code, modified by the Board of Dental Examiners to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the
7 seventeenth day of October, two thousand seven, relating to
8 the Board of Dental Examiners (rule for the West Virginia
9 Board of Dental Examiners, 5 CSR 1), is authorized.

§64-9-5. State Election Commission.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section eight, article eight, chapter
4 three of this code, modified by the State Election
5 Commission to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the seventh day of December, two thousand seven,
8 relating to the State Election Commission (corporate political
9 activity, 146 CSR 1), is authorized with the following
10 amendments:

11 On page one, subsection 2.2., by striking out the words
12 “Contribution or Expenditure” and inserting in lieu thereof
13 the words “Contribution’ or ‘Expenditure”;

14 On page one, subdivision 2.2.e., by striking out “WV”
15 and inserting in lieu thereof “W. Va.”;

16 On page three, subsection 3.1., line two, by striking out
17 the word “series” and inserting in lieu thereof the word
18 “rule”;

19 On page four, subdivision 3.3.a., by striking out “WV”
20 and inserting in lieu thereof “W. Va.”;

21 On page four, paragraph 3.3.c.1., by striking out “WV”
22 and inserting in lieu thereof “W. Va.”;

23 On page four, paragraph 3.3.d.1., by striking out “WV”
24 and inserting in lieu thereof “W. Va.”;

25 On page five, paragraph 3.3.f.5., lines four and seven, by
26 striking out the word “Paragraph” and inserting in lieu
27 thereof the word “paragraph”;

28 On page five, paragraph 3.3.f.5., lines five and seven, by
29 striking out the word “subsection” and inserting in lieu
30 thereof the word “subdivision”;

31 On page five, paragraph 3.3.f.6., by striking out the
32 words “the above regulations” and inserting in lieu thereof
33 the words “this rule”;

34 On page five, paragraph 3.3.f.7., by changing the colon
35 to a comma and by striking out the words “Provided, that
36 such” and inserting in lieu thereof the words “provided that
37 the”;

38 On page six, subsection 4.3., by striking out the words
39 “The establishment, administration and solicitation of
40 contributions to a Corporate Political Action Committee, by
41 means and in amounts as herein specified:

42 4.3.a.”;

43 On page seven, subdivision 4.4.a., by striking out the
44 word “Section” and inserting in lieu thereof the word
45 “subsection”;

46 On page seven, subdivision 4.4.b., line five, by striking
47 out the word “Section” and inserting in lieu thereof the word
48 “subsection”;

49 On page eight, subsection 5.1., by striking out “WV” and
50 inserting in lieu thereof “W. Va.”;

51 On page eight, subdivision 5.1.a., by striking out “5.1.a.”
52 and by adding the subsequent sentence to the end of
53 subsection 5.1.;

54 On page eight, subdivision 5.2.b., by striking out “WV”
55 and inserting in lieu thereof “W. Va.”;

56 And,

57 On page nine, section seven, by striking out “7.1.”.

58 (b) The legislative rule filed in the State Register on the
59 twenty-seventh day of July, two thousand seven, authorized
60 under the authority of section five, article one-a, chapter three
61 of this code, modified by the State Election Commission to
62 meet the objections of the Legislative Rule-Making Review
63 Committee and refiled in the State Register on the seventh
64 day of December, two thousand seven, relating to the State
65 Election Commission (regulation of campaign finance, 146
66 CSR 3), is authorized with the following amendment:

67 On page thirteen, by striking out section 14 in its entirety.

68 (c) The legislative rule filed in the State Register on the
69 twenty-seventh day of July, two thousand seven, authorized
70 under the authority of section five, article one-a, chapter three
71 of this code, modified by the State Election Commission to
72 meet the objections of the Legislative Rule-Making Review
73 Committee and refiled in the State Register on the seventh
74 day of December, two thousand seven, relating to the State
75 Election Commission (election expenditures, 146 CSR 4), is
76 authorized with the following amendment:

77 On page four, by striking out sections 12 and 13 in their
78 entirety.

§64-9-6. Board of Funeral Service Examiners.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section six, article six, chapter thirty of
4 this code, modified by the Board of Funeral Service
5 Examiners to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register

7 on the seventh day of December, two thousand seven,
8 relating to the Board of Funeral Service Examiners (funeral
9 director, embalmer, apprentice, courtesy card holder and
10 funeral establishment requirements, 6 CSR 1), is authorized
11 with the following amendments:

12 On page two, section two, by striking subdivision 2.8.6
13 in its entirety;

14 On page fifteen, section sixteen, subdivision 16.11.3, by
15 striking the words and numbers ‘two hundred dollars (\$200)’
16 and inserting in lieu thereof the words and numbers ‘one
17 hundred sixty dollars (\$160.00)’;

18 And,

19 On page sixteen, section sixteen, by striking subdivisions
20 16.11.15 and 16.11.16 in their entirety.

§64-9-7. Board of Hearing Aid Dealers.

1 The legislative rule filed in the State Register on the
2 twenty-fifth day of July, two thousand seven, authorized
3 under the authority of section three, article twenty-six,
4 chapter thirty of this code, modified by the Board of Hearing
5 Aid Dealers to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the third day of January, two thousand eight, relating to
8 the Board of Hearing Aid Dealers (rules governing the West
9 Virginia Board of Hearing Aid Dealers, 8 CSR 1), is
10 authorized with the following amendments:

11 On page two, subsection 4.1., by striking out ‘fifty dollars
12 (\$50.00)’ and inserting in lieu thereof ‘one hundred dollars
13 (\$100.00)’;

14 On page two, subsection 4.3., by striking out ‘forty
15 dollars (\$40.00)’ and the remaining sentence and inserting in
16 lieu thereof ‘one hundred dollars (\$100.00)’;

17 On page two, subsection 4.5., by striking out ‘one dollar
18 (\$1.00)’ and inserting in lieu thereof ‘ten dollars (\$10.00)’;

19 On page two, subsection 4.6., by striking out ‘twenty-five
20 dollars (\$25.00)’ and inserting in lieu thereof ‘one hundred
21 dollars (\$100.00)’;

22 On page three, subsection 4.7., by striking out ‘fifty
23 dollars (\$50.00)’ and inserting in lieu thereof ‘one hundred
24 dollars (\$100.00)’;

25 On page four, subsection 7.1., after the words ‘the
26 prospective customer:’ by striking out the remainder of the
27 subsection and inserting in lieu thereof the following: The
28 purchaser has been advised at the outset of his relationship
29 with the hearing aid dealer that any examination of
30 representation made by a licensed hearing aid dealer in
31 connection with the practice of fitting this hearing aid is not
32 an examination, diagnosis or prescription by a person
33 licensed to practice medicine in this state and therefore must
34 not be regarded as medical opinion.;

35 On page four, subdivision 7.5.d., by striking out the
36 words ‘be required to advise in writing’ and inserting in lieu
37 thereof the word ‘determine’;

38 On page four, by striking out all of subsection 7.6. and
39 renumbering the remaining subsections;

40 On page five, subsection 8.2., by striking out all of
41 subdivisions (i) and (j) and re-lettering the remaining
42 subdivision;

43 On page five, by striking out all of subsection 8.5;

44 On page six, subsection 9.4., by striking out the words
45 ‘terms ‘Certified Member’ or ‘Certified Hearing Aid

46 Audiologist’ and inserting in lieu thereof the words ‘term
47 ‘Certified Member’;

48 On page six, after subsection 9.6., by adding thereto a
49 new subsection, to read as follows:

50 ‘9.7. The hearing aid dealer must prominently display
51 the following advisement: ‘Consumers may contact the West
52 Virginia Board of Hearing Aid Dealers at 167 11th Avenue,
53 South Charleston, WV 25303, if the consumer believes that
54 the hearing aid dealer has not satisfied the terms of the
55 contract.’;

56 On page seven, subsection 12.2., after the words ‘body of
57 the purchase agreement:’ by striking out the remainder of the
58 subsection and inserting in lieu thereof the following: ‘You
59 have the right to return the hearing aid to the dealer from
60 whom it was purchased at anytime within thirty (30) days
61 after receipt of the aid and rescind the purchase agreement
62 except for reasonable fitting and examination charges
63 (\$125.00 maximum fitting charge), if the aid does not
64 function properly or cannot be adjusted to correct the
65 deficiency in your hearing or is otherwise unsatisfactory.
66 The aid so returned must be without damage.’;

67 And,

68 On page seven, by striking out all of subsection 12.4. and
69 renumbering the remaining subsections.

§64-9-8. Massage Therapy Licensure Board.

1 The legislative rule filed in the State Register on the
2 sixteenth day of July, two thousand seven, authorized under
3 the authority of section six, article thirty-seven, chapter thirty
4 of this code, relating to the Massage Therapy Licensure
5 Board (general provisions, 194 CSR 1), is authorized.

§64-9-9. Medical Imaging and Radiation Therapy Technology Board of Examiners.

1 (a) The legislative rule filed in the State Register on the
2 eighteenth day of July, two thousand seven, authorized under
3 the authority of section seven, article twenty-three, chapter
4 thirty of this code, modified by the Medical Imaging and
5 Radiation Therapy Technology Board of Examiners to meet
6 the objections of the Legislative Rule-Making Review
7 Committee and refiled in the State Register on the sixteenth
8 day of October, two thousand seven, relating to the Medical
9 Imaging and Radiation Therapy Technology Board of
10 Examiners (rule of the Medical Imaging and Radiation
11 Therapy Technology Board of Examiners, 18 CSR 1), is
12 authorized.

13 (b) The legislative rule filed in the State Register on the
14 eighteenth day of July, two thousand seven, authorized under
15 the authority of section seven, article twenty-three, chapter
16 thirty of this code, modified by the Medical Imaging and
17 Radiation Therapy Technology Board of Examiners to meet
18 the objections of the Legislative Rule-Making Review
19 Committee and refiled in the State Register on the sixteenth
20 day of October, two thousand seven, relating to the Medical
21 Imaging and Radiation Therapy Technology Board of
22 Examiners (continuing education, 18 CSR 2), is authorized
23 with the following amendment:

24 On page one, subsection 1.2., by striking out '30-7A-5
25 &64-9-17(h)' and inserting in lieu thereof '30-23-7';

26 And,

27 On page five, subdivision 3.4.1., by striking out the
28 words 'Grand fathered' and inserting in lieu thereof the word
29 'grandfathered'.

30 (c) The legislative rule filed in the State Register on the
31 eighteenth day of July, two thousand seven, authorized under
32 the authority of section seven, article twenty-three, chapter
33 thirty of this code, modified by the Medical Imaging and
34 Radiation Therapy Technology Board of Examiners to meet
35 the objections of the Legislative Rule-Making Review
36 Committee and refiled in the State Register on the sixteenth
37 day of October, two thousand seven, relating to the Medical
38 Imaging and Radiation Therapy Technology Board of
39 Examiners (standard of ethics, 18 CSR 5), is authorized.

§64-9-10. Board of Medicine.

1 (a) The legislative rule filed in the State Register on the
2 tenth day of July, two thousand seven, authorized under the
3 authority of section seven, article three, chapter thirty of this
4 code, relating to the Board of Medicine (continuing education
5 for physicians and podiatrists, 11 CSR 6), is authorized with
6 the following amendments:

7 On page one, subsection 2.1., by striking out the number
8 '1993' and inserting in lieu thereof the number '2008';

9 On page one, subsection 2.1., by striking out the words
10 'At least thirty (30) hours of the hours must be related to the
11 physician's area or areas of specialty.' and inserting in lieu
12 thereof the following: 'Beginning July 1, 2008, at least thirty
13 (30) hours of the continuing medical education hours must be
14 related to the physician's area or areas of specialty.';

15 And,

16 On page two, subsection 2.3., by striking out the words
17 'At least thirty (30) hours of the hours must be related to the
18 podiatrist's area or areas of specialty.' and inserting in lieu
19 thereof the following: 'Beginning July 1, 2008, at least thirty
20 (30) hours of the continuing podiatric education hours must
21 be related to the podiatrist's area or areas of specialty.'.

22 (b) The legislative rule filed in the State Register on the
23 sixteenth day of November, two thousand six, authorized
24 under the authority of section twenty-eight, article five,
25 chapter thirty of this code, modified by the Board of
26 Medicine to meet the objections of the Legislative Rule-
27 Making Review Committee and refiled in the State Register
28 on the tenth day of October, two thousand seven, relating to
29 the Board of Medicine (collaborative pharmacy practice, 11
30 CSR 8), is authorized.

31 (c) The legislative rule filed in the State Register on the
32 nineteenth day of July, two thousand seven, authorized under
33 the authority of section seven-a, article three, chapter thirty
34 of this code, modified by the Board of Medicine to meet the
35 objections of the Legislative Rule-Making Review
36 Committee and refiled in the State Register on the twenty-
37 ninth day of November, two thousand seven, relating to the
38 Board of Medicine (certification, disciplinary and complaint
39 procedures, continuing education and radiologist assistants,
40 11 CSR 9), is authorized.

§64-9-11. Nursing Home Administrators Licensing Board.

1 The legislative rule filed in the State Register on the
2 thirteenth day of June, two thousand seven, authorized under
3 the authority of section seven, article twenty-five, chapter
4 thirty of this code, modified by the Nursing Home
5 Administrators Licensing Board to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the twenty-eighth day of August, two
8 thousand seven, relating to the Nursing Home Administrators
9 Licensing Board (nursing home administrators, 21 CSR 1),
10 is authorized with the following amendment:

11 On page six, subdivision 4.2.1.a., after the words
12 ‘Emeritus State Administrators’ by striking out the remainder
13 of the subdivision and inserting in lieu thereof the words
14 ‘shall obtain annually at least ten (10) clock hours of

15 continuing education approved as provided in subsection
16 4.2.1. of this rule.’.

§64-9-12. Pharmaceutical Cost Management Council.

1 The legislative rule filed in the State Register on the ninth
2 day of July, two thousand seven, authorized under the
3 authority of section fifteen, article three-c, chapter five-a of
4 this code, modified by the Pharmaceutical Cost Management
5 Council to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the fourteenth day of January, two thousand eight, relating
8 to the Pharmaceutical Cost Management Council
9 (prescription drug advertising expense reporting, 206 CSR 1),
10 is authorized.

§64-9-13. Board of Professional Surveyors.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section six, article thirteen-a, chapter
4 thirty of this code, modified by the Board of Professional
5 Surveyors to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on the nineteenth day of December, two thousand seven,
8 relating to the Board of Professional Surveyors (examination
9 and licensing of professional surveyors in West Virginia, 23
10 CSR 1), is authorized with the following amendment:

11 On page one, subsection 1.2., by striking out ‘30-13A-
12 5(13)’ and inserting in lieu thereof ‘30-13A-6’;

13 On page two, subsection 2.10., after the word ‘Board’, by
14 inserting a period and striking out the remainder of that
15 subsection.

16 On page four, subdivision 3.1.d., after the word ‘data’ by
17 striking out the words ‘education and employment history’;

18 On page five, subdivision 3.4.a.3., after the words ‘of the
19 examination’, by striking out the word ‘for’ and inserting in
20 lieu thereof the word ‘after’;

21 On page eight, subdivision 5.2.c. after the word
22 ‘certificate’ by striking out the word ‘shall’ and inserting in
23 lieu thereof the word ‘may’;

24 On page nine, subdivision 5.2.f.3. after the word
25 ‘examination’ by striking the word ‘for’ and inserting in lieu
26 thereof the word ‘after’;

27 On page nine, subdivision 5.3.c. after the underlined
28 word ‘shall’ by adding the word ‘conspicuously’;

29 On page ten, after subdivision 5.3.e. by adding a new
30 subdivision, designated 5.3.f., to read as follows: ‘A wallet
31 card shall be issued simultaneously to be kept on the
32 licensee’s person.’;

33 And,

34 On page ten, subdivision 5.5.c, in the second sentence,
35 after the word ‘months’ by striking the word ‘shall’ and
36 inserting in lieu thereof the word ‘may’.

37 (b) The legislative rule filed in the State Register on the
38 twenty-seventh day of July, two thousand seven, authorized
39 under the authority of section five, article thirteen-a, chapter
40 thirty of this code and section six of said article, modified by
41 the Board of Professional Surveyors to meet the objections of
42 the Legislative Rule-Making Review Committee and refiled
43 in the State Register on the nineteenth day of December, two
44 thousand seven, relating to the Board of Professional
45 Surveyors (fees for surveyors and surveying firms, 23 CSR
46 4), is authorized with the following amendment:

47 On page one, subsection 1.2., after “30-13A-5(13)” by
48 inserting “ and §30-13A-6;”;

49 On page three, section 4, after the words “PS License
50 (Active or Inactive)”, by striking out “\$150.00” and inserting
51 in lieu thereof “\$100.00”;

52 On page three, section 4, by striking out the colon and the
53 following:

54 “Less than ten (10) employees \$150.00”

55 “Ten (10) employees to less than fifty (50) \$250.00”

56 “Fifty (50) employees or more \$500.00”

57 and inserting in lieu thereof “\$100.00”;

58 And,

59 On page four, subdivision 4.5.i. after the words ‘Returned
60 Check Fee’ by striking the figure ‘\$40.00’ and inserting in
61 lieu thereof the following ‘Maximum allowable by WV
62 Code’.

63 (c) The legislative rule filed in the State Register on the
64 twenty-seventh day of July, two thousand seven, authorized
65 under the authority of section six, article thirteen-a, chapter
66 thirty of this code, modified by the Board of Professional
67 Surveyors to meet the objections of the Legislative Rule-
68 Making Review Committee and refiled in the State Register
69 on the nineteenth day of December, two thousand seven,
70 relating to the Board of Professional Surveyors (standards for
71 practice of surveying in West Virginia, 23 CSR 5), is
72 authorized with the following amendment:

73 On page one, subsection 1.2., by striking out ‘5’ and
74 inserting in lieu thereof ‘6’.

§64-9-14. Public Service Commission.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of September, two thousand six, authorized
3 under the authority of section six-b, article six, chapter
4 twenty-four of this code, relating to the Public Service
5 Commission (emergency telephone service, 150 CSR 25), is
6 authorized with the following amendments:

7 On page one, subsection 2.1., line one, by striking out
8 ‘these rules’ and inserting in lieu thereof ‘this rule’;

9 On page one, subsection 2.1., line six, by striking out
10 ‘these rules’ and inserting in lieu thereof ‘this rule’;

11 On page four, subsection 2.27., following the words ‘the
12 Speaker of the House of Delegates or that person’s designee’
13 by adding a comma and the words ‘as a non-voting member’;

14 On page four, subsection 2.27., following the words ‘the
15 Senate President or that person’s designee’ by adding a
16 comma and the words ‘as a non-voting member’;

17 On page eight, subsection 5.1., by striking out ‘5.1.a.’
18 and inserting in lieu thereof ‘5.2.’ and by renumbering the
19 remaining subsections accordingly;

20 On page ten, section seven, by striking out ‘7.1.’;

21 On page twelve, section twelve, by striking out ‘12.1.’;

22 On page sixteen, subdivision 13.5.d, at the end of the
23 second line, following the word ‘least’, by striking the word
24 ‘five’ and inserting in lieu thereof the words ‘four voting’;

25 And,

26 On page sixteen, by striking subsection 13.6. in its
27 entirety.

§64-9-15. Secretary of State.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section three, article three, chapter
4 thirty-nine-a of this code, modified by the Secretary of State
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 ninth day of October, two thousand seven, relating to the
8 Secretary of State (use of digital signatures, state certificate
9 authority and state repository, 153 CSR 30), is authorized
10 with the following amendments:

11 On page two, subsection 3.3., by striking out the words
12 ‘and approved by’;

13 On page two, subsection 3.3., after the word
14 ‘Technology’, by changing the comma to a period, striking
15 out the words ‘through its chief technology officer or his or
16 her designee,’ and inserting in lieu thereof the words ‘The
17 specifications must be approved by the Office of
18 Technology’;

19 On page four, subsection 6.2., after the word
20 ‘Technology’, by striking out the comma and the words
21 ‘through its chief technology officer or his or her designee’;

22 On page four, subdivision 7.1.h., after the word ‘The’ by
23 inserting the words ‘Secretary of State may ask or enter into
24 an agreement with the’;

25 On page four, subdivision 7.1.h., after the word
26 ‘Technology’, by striking out the comma and the words
27 ‘through its chief technology officer or his or her designee,
28 shall’ and inserting in lieu thereof the word ‘to’;

29 On page four, subdivision 7.1.h., after the word ‘and’ by
30 inserting the word ‘to’;

31 On page five, subsection 7.3., by striking out the words
32 ‘Office of Technology, through its chief technology officer
33 or his or her designee,’ and by inserting the words ‘Secretary
34 of State’;

35 On page five subsection 7.3., by striking out the words
36 ‘for a term no less than one year’;

37 On page five subsection 7.3., after the period, by
38 inserting the words ‘The Secretary of State may defer to the
39 Office of Technology his or her authority to initiate the
40 procurement process.’;

41 On page five, subsection 7.4., after the word ‘The’, by
42 inserting the words ‘Secretary of State may ask or enter into
43 an agreement with the’;

44 On page five, subsection 7.4., by striking out the word
45 ‘shall’ and inserting in lieu thereof the word ‘to’;

46 On page five, subsection 7.4., by striking out the words
47 ‘Secretary of State’ and inserting in lieu thereof the words
48 ‘him or her’;

49 And,

50 On page five, subdivision 7.5.a., by striking out the
51 words ‘The Office of Technology, through its chief
52 technology officer or his or her designee, shall inform the
53 Secretary of State’ and insert in lieu thereof the words ‘The
54 Secretary of State may ask or enter into an agreement with
55 the Office of Technology to inform him or her’.

**§64-9-16. Board of Examiners for Speech-Language Pathology
and Audiology.**

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of June, two thousand seven, authorized
3 under the authority of section ten, article thirty-two, chapter
4 thirty of this code, modified by the Board of Examiners for
5 Speech-Language Pathology and Audiology to meet the
6 objections of the Legislative Rule-Making Review
7 Committee and refiled in the State Register on the fifth day
8 of December, two thousand seven, relating to the Board of
9 Examiners for Speech-Language Pathology and Audiology
10 (licensure of speech-pathology and audiology, 29 CSR 1), is
11 authorized with the following amendments:

12 On page two, section 6.1.b., by striking the word ‘five’
13 and reinserting in lieu thereof the word, ‘ten’;

14 And,

15 On page twenty, section 13.11., after the word ‘licensure’
16 and the period, by striking out the remainder of the rule.

17 (b) The legislative rule relating to the Board of
18 Examiners for Speech-Language Pathology and Audiology
19 (Code of Ethics, 29 CSR 5), is authorized as follows:

20 ‘ 29 CSR 5

**West Virginia Board of Examiners for Speech-Language
Pathology and Audiology Code of Ethics**

§29-5-1. General.

1 1.1. Scope. – This legislative rule establishes standards of
2 conduct speech-language pathologist or audiologist in the
3 State of West Virginia.

4 1.2. Authority. – W.Va. Code §30-32-10

5 1.3. Filing Date. –

6 1.4. Effective Date. --

7 1.5. Preamble: The preservation of the highest standards
8 of integrity and ethical principles is vital to the responsible
9 discharge of obligations in the professions of Speech-
10 Language Pathology and Audiology. This code of Ethics sets
11 forth the fundamental principles and rules considered
12 essential to this purpose. Every individual who is licensed by
13 this Board as a Professional, Provisional or a Speech or
14 Audiology Assistant.

**§29.5.2. Licensed by this Board as a Professional, Provisional or
a Speech or Audiology Assistant.**

1 2.1. Any action that violates the spirit and purpose of this
2 Code shall be considered unethical. Failure to specify any
3 particular responsibility or practice in this Code of Ethics
4 shall not be construed as denial of the existence of such
5 responsibilities or practices.

6 2.2. The fundamentals of ethical conduct are described
7 by Principles of Ethics and Rules of Ethics as they relate to
8 responsibility to persons served, to the public, and to the
9 professions of speech-language pathology and audiology.

10 2.3. Principles of Ethics, aspirational and inspirational in
11 nature, form the underlying moral basis for the Code of
12 Ethics. Licensees shall observe these principles as
13 affirmative obligations under all conditions of professional
14 activity. Rules of Ethics are specific statements of minimally
15 acceptable professional conduct or of prohibitions and are
16 applicable to all licensees.

17 2.4. *Principle of Ethics I*

18 2.4.a. Licensees shall honor their responsibility to hold
19 paramount the welfare of persons they serve professionally.

20 2.4.b. *Rules of Ethics*

21 2.4.b.1. Licensees shall provide all services competently.

22 2.4.b.2. Licensees shall use every resource, including
23 referral when appropriate, to ensure that high-quality service
24 is provided.

25 2.4.b.3. Licensees shall not discriminate in the delivery
26 of professional services on the basis of race ethnicity, gender,
27 age, religion, national origin, sexual orientation, or disability.

28 2.4.b.4. Licensees shall fully inform the persons they
29 serve of the nature and possible effects of services rendered
30 and products dispensed.

31 2.4.b.5. Licensees shall evaluate the effectiveness of
32 services rendered and of products dispensed and shall
33 provide services or dispense products only when benefit can
34 be reasonably expected.

35 2.4.b.6. Licensees shall not guarantee the results of any
36 treatment or procedure, directly or by implication; however,
37 they may make a reasonable statement of prognosis.

38 2.4.b.7. Licensees shall not evaluate or treat speech,
39 language, or hearing disorders solely by correspondence.

40 2.4.b.8. Licensees shall maintain adequate records of
41 professional services rendered and products dispensed and
42 shall allow access to these records when appropriately
43 authorized.

44 2.4.b.9. Licensees shall not reveal, without authorization,
45 any professional or personal information about the person
46 served professionally, unless required by law to do so, or
47 unless doing so is necessary to protect the welfare of the
48 person or of the community.

49 2.4.b.10. Licensees shall not charge for services not
50 rendered, nor shall they misrepresent, in any fashion, services
51 rendered or products dispensed.

52 2.4.b.11. Licensees shall use persons in research or as
53 subjects of teaching demonstrations only with their informed
54 consent.

55 2.4.b.12. Licensees whose professional services are
56 adversely affected by substance abuse or other health-related
57 conditions shall seek professional assistance and, where
58 appropriate, withdraw from the affected areas of practice.

59 2.5. *Principles of Ethics II*

60 2.5.a.. Licensees shall honor their responsibility to
61 achieve and maintain the highest level of professional
62 competence.

63 2.5.b. *Rules of Ethics*

64 2.5.b.1. Licensees shall engage in the provision of
65 clinical services only when they hold the appropriate license
66 or when they are in the licensure process and are supervised
67 by an individual who holds the appropriate license.

68 2.5.b.2. Licensees shall engage in only those aspects of
69 the professions that are within the scope of their competence,
70 considering their level of education, training, and experience.

71 2.5.b.3. Licensees shall continue their professional
72 development throughout their careers.

73 2.5.b.4. Licensees shall delegate the provision of clinical
74 services only to persons who are licensed or to persons in the
75 education or licensure process who are appropriately
76 supervised. The provision of support services may be

77 delegated to persons who are neither licensed nor in the
78 licensure process only when a license holder provides
79 appropriate supervision.

80 2.5.b.5. Licensees shall prohibit any of their professional
81 staff from providing services that exceed the staff member's
82 competence, considering the staff member's level of
83 education, training, and experience.

84 2.5.b.6. Licensees shall ensure that all equipment used in
85 the provision of services is in proper working order and is
86 properly calibrated.

87 2.6. *Principle of Ethics III*

88 2.6.a. Licensees shall honor their responsibility to the
89 public by promoting public understanding of the professions,
90 by supporting the development of services designed to fulfill
91 the unmet needs of the public, and by providing accurate
92 information in all communications involving any aspect of
93 the professions.

94 2.6.b. *Rules of Ethics*

95 2.6.b.1. Licensees shall not misrepresent their
96 credentials, competence, education, training, or experience.

97 2.6.b.2. Licensees shall not participate in professional
98 activities that constitute a conflict of interest.

99 2.6.b.3. Licensees shall not misrepresent diagnostic
100 information, services rendered, or products dispensed or
101 engage in any scheme or artifice to defraud in connection
102 with obtaining payment or reimbursement for such services
103 or products.

104 2.6.b.4. Licensees' statements to the public shall provide
105 accurate information about the nature and management of
106 communication disorders, about the professions, and about
107 professional services.

108 2.6.b.5. Licensees' statements to the public --
109 advertising, announcing, and marketing their professional
110 services, reporting research results, and promoting products
111 -- shall adhere to prevailing professional standards and shall
112 not contain misrepresentations.

113 2.7. *Principle of Ethics IV*

114 2.7.a. Licensees shall honor their responsibilities to the
115 professions and their relationships with colleagues, students,
116 and members of allied professions. Licensees shall uphold
117 the dignity and autonomy of the professions, maintain
118 harmonious interprofessional and intraprofessional
119 relationships, and accept the professions' self-imposed
120 standards.

121 2.7.b. *Rules of Ethics*

122 2.7.b.1. Licensees shall prohibit anyone under their
123 supervision from engaging in any practice that violates the
124 Code of Ethics.

125 2.7.b.2. Licensees shall not engage in dishonesty, fraud,
126 deceit, misrepresentation, or any form of conduct that
127 adversely reflects on the professions or on the licensee's
128 fitness to serve persons professionally.

129 2.7.b.3. Licensees shall assign credit to only those
130 licensees who have contributed to a publication, presentation,
131 or product. Credit shall be assigned in proportion to the
132 contribution and only with the contributor's consent.

133 2.7.6.4. Licensee's statements to colleagues about
134 professional services, research results, and products shall
135 adhere to prevailing professional standards and shall contain
136 no misrepresentations.

137 2.7.b.5. Licensees shall not provide professional services
138 without exercising independent professional judgment,
139 regardless of referral source or prescription.

140 2.7.b.6. Licensees shall not discriminate in their
141 relationships with colleagues, students, and members of
142 allied professions on the basis of race or ethnicity, gender,
143 age, religion, national origin, sexual orientation, or disability.

144 2.7.b.7. Licensees who have reason to believe that the
145 Code of Ethics has been violated shall inform the West
146 Virginia Board of Examiners.

147 2.7.b.8. Licensees shall cooperate fully with the West
148 Virginia Board of Examiners in its investigation and
149 adjudication of matters related to this Code of Ethics.'.

§64-9-17. Board of Veterinary Medicine.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section four, article ten, chapter thirty
4 of this code, modified by the Board of Veterinary Medicine
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 fourth day of January, two thousand eight, relating to the
8 Board of Veterinary Medicine (the registration of veterinary
9 technicians, 26 CSR 3), is authorized.

CHAPTER 141

**(Com. Sub. for H.B. 4255 - By Delegates Brown, Miley, Burdiss,
Talbot and Overington)**

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Division of Labor to promulgate a legislative rule relating to steam boiler inspection; authorizing the Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of plumbing work; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the criteria and standards for alternative training

programs for apprentice coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to conditions upon which oil and gas operators may access state forests; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife scientific collection permits.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF
COMMERCE TO PROMULGATE
LEGISLATIVE RULES.**

§64-10-1. Division of Labor.

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

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

§64-10-1. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section seven, article three, chapter
4 twenty-one, of this code, modified by the Division of Labor
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 seventh day of December, two thousand seven, relating to the
8 Division of Labor (steam boiler inspection, 42 CSR 3), is
9 authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-seventh day of July, two thousand seven, authorized
12 under the authority of section three, article one-b, chapter
13 twenty-one, of this code, modified by the Division of Labor
14 to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on the
16 seventh day of December, two thousand seven, relating to the
17 Division of Labor (verifying the legal employment status of
18 workers, 42 CSR 31), is authorized with the following
19 amendment:

20 On page one, subsection 3.8., after the word “employer”,
21 by striking out the words “as defined in this rule”;

22 On page two, section 4, by striking out the subsection
23 designation “4.1.”;

24 On page two, section 4 by striking out subsection 4.2 in
25 its entirety;

26 On page two, subsection 5.1., by striking out the word
27 “have” and inserting in lieu thereof the word “maintain”;

28 On page three, subsection 6.5., by striking out
29 subdivision 6.5.a. in its entirety and by striking out the
30 subdivision designation “b.”;

31 On page three, subsection 6.6. by striking out the
32 subdivision designation “a.” and by striking out subdivision
33 6.6.b. in its entirety;

34 On pages three and four, by striking out subsection 7.1.
35 in its entirety and inserting in lieu thereof the following:

36 “7.1. The Commissioner may ask the Bureau of
37 Employment programs, the Division of Motor Vehicles or
38 any other state agency for assistance in confirming the

39 validity of an employee's legal status or authorization to
40 work.”;

41 And,

42 On page four, by striking out section 8 in its entirety.

43 (c) The legislative rule filed in the State Register on the
44 twenty-seventh day of July, two thousand seven, authorized
45 under the authority of section four, article fourteen, chapter
46 twenty-one, of this code, modified by the Division of Labor
47 to meet the objections of the Legislative Rule-Making
48 Review Committee and refiled in the State Register on the
49 seventh day of December, two thousand seven, relating to the
50 Division of Labor (supervision of plumbing work, 42 CSR
51 32), is authorized with the following amendment:

52 On page two, subsection 7.2, at the beginning of the first
53 sentence in the subsection, by inserting the words “Subject to
54 the provisions of subsection 6.2 of this rule,”;

55 On page three, subsection 8.1, at the end of the
56 subsection, by inserting the words: “The Commissioner may,
57 on his or her own motion, conduct an investigation to
58 determine whether there are any grounds for disciplinary
59 action against a licensee. The Commissioner shall, upon the
60 written complaint of any person, conduct an investigation to
61 determine whether there are any grounds for disciplinary
62 action against a licensee. The Commissioner may provide a
63 form for this purpose, but a complaint may be filed in any
64 form. The Commissioner shall provide a copy of the
65 complaint to the licensee.”;

66 On page four, section 9, by striking out the subsection in
67 its entirety and inserting in lieu thereof a new section 9, to
68 read as follows:

“§42-32-9. Cease and desist orders; penalties; appeals.

1 9.1 The Commissioner may issue a cease and desist
2 order to any person performing or offering to perform
3 plumbing work without a license issued by the
4 Commissioner. Any person continuing to engage in
5 plumbing work after the issuance of a cease and desist order
6 is subject to the penalties set forth in W. Va. Code §21-14-7.

7 9.2 Any person adversely affected by an action of the
8 Commissioner may appeal the action pursuant to the
9 provisions of W. Va. Code §29A-5.”; and

10 On page four, by renumbering section 12 as section 11.

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

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section five, article seven, chapter
4 twenty-two-a, of this code, modified by the Office of Miners’
5 Health, Safety and Training to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the fourteenth day of December, two
8 thousand seven, relating to the Office of Miners’ Health,
9 Safety and Training (criteria and standards for alternative
10 training programs for apprentice coal mine electricians, 48
11 CSR 8), is authorized.

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

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand seven, authorized
3 under the authority of section twenty-three-a, article two,
4 chapter twenty, of this code, modified by the Division of
5 Natural Resources to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State

7 Register on the fifth day of November, two thousand seven,
8 relating to the Division of Natural Resources (commercial
9 whitewater outfitters, 58 CSR 12), is authorized with the
10 following amendments:

11 On page six, subsection 5.2, by striking out the
12 subsection in its entirety and inserting lieu there of the
13 following language:

14 “5.2 Fee Amount.

15 5.2.1. The study and improvement fee is thirty-five cents
16 (\$.35) for each customer transported on a commercial
17 whitewater trip in study zones on the Cheat, New,
18 Shenandoah and Tygart Valley Rivers.

19 5.2.2. The study and improvement fee is seventy cents
20 (\$.70) for each customer transported on a commercial
21 whitewater trip in study zones on the Gauley River.

22 5.2.3. If a commercial whitewater trip exceeds one day in
23 duration, the appropriate fee shall be collected for each day,
24 or part of a day, of the trip.”

25 On page six, by striking out subsection 5.4, including
26 subdivisions 5.4.1 and 5.4.2, in their entirety, and inserting in
27 lieu thereof the following language:

28 “5.4. Gauley River Study and Improvement Fee:

29 5.4.1. For the purpose of improving and promoting the
30 whitewater industry on the Gauley River, one-half of all
31 study and improvement fees collected pursuant to subdivision
32 5.2.2 of this rule shall be used to stock the Gauley River with
33 trout during the spring and fall seasons of each year to
34 mitigate the loss of fishing opportunities resulting from the
35 additional water volume on the Gauley River. The

36 Whitewater Commission may hire a private contractor to
37 administer the trout stocking program.

38 5.4.2. The Whitewater Commission shall review the
39 amount of the study and improvement fee collected pursuant
40 to subdivision 5.2.2 of this rule every four years to determine
41 whether the fee is sufficient to assure adequate funding for
42 the trout stocking program.”

43 (b) The legislative rule filed in the State Register on the
44 twenty-seventh day of July, two thousand seven, authorized
45 under the authority of section seven, article one, chapter
46 twenty, of this code, modified by the Division of Natural
47 Resources to meet the objections of the Legislative Rule-
48 Making Review Committee and refiled in the State Register
49 on the fifth day of November, two thousand seven, relating
50 to the Division of Natural Resources (revocation of hunting
51 and fishing licenses, 58 CSR 23), is authorized.

52 (c) The legislative rule filed in the State Register on the
53 twenty-seventh day of July, two thousand seven, authorized
54 under the authority of section seven, article one, chapter
55 twenty, of this code, relating to the Division of Natural
56 Resources (special boating rules, 58 CSR 26), is authorized.

57 (d) The legislative rule filed in the State Register on the
58 twenty-seventh day of July, two thousand seven, authorized
59 under the authority of section seven, article one, chapter
60 twenty, of this code, modified by the Division of Natural
61 Resources to meet the objections of the Legislative Rule-
62 Making Review Committee and refiled in the State Register
63 on the fifteenth day of January, two thousand eight, relating
64 to the Division of Natural Resources (conditions upon which
65 oil and gas operators may access state forests, 58 CSR 35), is
66 authorized.

67 (e) The legislative rule filed in the State Register on the
68 nineteenth day of July, two thousand seven, authorized under
69 the authority of section seven, article one, chapter twenty, of
70 this code, modified by the Division of Natural Resources to
71 meet the objections of the Legislative Rule-Making Review
72 Committee and refiled in the State Register on the fifth day
73 of November, two thousand seven, relating to the Division of
74 Natural Resources (wildlife scientific collection permits, 58
75 CSR 42), is authorized.

CHAPTER 142

(Com. Sub. for H.B. 4076 - By Delegate Cowles)

[Passed February 29, 2008; in effect from passage.]
[Approved by the Governor on March 10, 2008.]

AN ACT to amend and reenact §4-2A-2, §4-2A-4, §4-2A-6 and §4-2A-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5-5-2 of said code, all relating to providing employment benefits to public officials generally; increasing basic compensation and per diem expense allowance for members of the Legislature; increasing certain additional compensations for certain members of the Legislature; and increasing the annual incremental salary increase for certain eligible employees of the state.

Be it enacted by the Legislature of West Virginia:

That §4-2A-2, §4-2A-4, §4-2A-6 and §4-2A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5-5-2 of said code be amended and reenacted, all to read as follows:

Chapter**4. The Legislature.****5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.****CHAPTER 4. THE LEGISLATURE.****ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.****PART II. COMPENSATION.**

§4-2A-2. Basic compensation for services; proration.

§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

§4-2A-6. Travel expenses.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

§4-2A-2. Basic compensation for services; proration.

1 (a) Beginning in the calendar year two thousand nine and
2 for each calendar year after that, each member of the
3 Legislature shall receive as basic compensation for his or her
4 services the sum of twenty thousand dollars per calendar
5 year, to be paid as provided in subsection (b) of this section.
6 In addition to the basic compensation, members shall receive
7 the additional compensations as are expressly provided in
8 sections three, four and five of this article. All other increased
9 amounts or new amounts in respect to the compensation of
10 members of the Legislature, set forth in the resolution of the
11 Citizens Legislative Compensation Commission, dated the
12 ninth day of January, two thousand seven, and implemented
13 in sections two, four, six and eight of this article providing
14 for new amounts or amounts increased to new amounts
15 greater than those in force and effect on the first day of
16 January, two thousand seven, become effective for calendar
17 year two thousand nine and each calendar year after that:
18 *Provided*, That increased amounts or new amounts in respect
19 to the expenses of members of the Legislature, set forth in

20 said resolution, and implemented in sections six and eight of
21 this article providing for new amounts or amounts increased
22 to new amounts greater than those in force and effect on the
23 first day of January, two thousand seven, become effective
24 for calendar year two thousand eight and each calendar year
25 after that.

26 (b) The basic compensation is payable as follows:

27 (1) In the year two thousand nine, and every fourth year
28 after that:

29 (A) Five thousand dollars in each of February, March and
30 April, payable twice a month; and

31 (B) Six hundred twenty-five dollars in each of January,
32 May, June, July, August, September, October and November,
33 payable once a month.

34 (2) Beginning in two thousand ten, in all years except
35 those described in subdivision (1) of this subsection:

36 (A) Five thousand dollars in each of January, February
37 and March, payable twice a month; and

38 (B) Six hundred twenty-five dollars in each of April,
39 May, June, July, August, September, October and November,
40 payable once a month;

41 (c) In the event of the death, resignation or removal of a
42 member of the Legislature and the appointment and
43 qualification of his or her successor, the compensation
44 provided in this section for the month in which the death,
45 resignation or removal of the member of the Legislature
46 occurs shall be prorated between the original member and his
47 or her successor on the basis of the number of days served,
48 including Saturdays and Sundays in the month.

§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

1 (a) In addition to the basic and additional compensation
2 provided in sections two and three of this article, the
3 President of the Senate and the Speaker of the House of
4 Delegates shall each receive additional compensation of:

5 (1) One hundred fifty dollars per day for each day
6 actually served during any regular, extension of regular or
7 extraordinary session as presiding officer, including
8 Saturdays and Sundays; and

9 (2) One hundred fifty dollars per day for attending to
10 legislative business when the Legislature is not in regular,
11 extension of regular or extraordinary session and interim
12 committees are not meeting.

13 (b) In addition to the basic and additional compensation
14 provided in sections two and three of this article, the majority
15 leaders and minority leaders of the Senate and of the House
16 of Delegates shall each receive additional compensation of
17 fifty dollars per day for each day actually served during any
18 regular, extension of regular or during extraordinary session,
19 including Saturdays and Sundays, as the selected legislative
20 leaders of their respective political parties.

21 (c) The presiding officer and majority and minority leader
22 compensation shall be paid, from time to time, during any
23 such session or interim period, as the case may be, as may be
24 prescribed by rules established by the Legislative Auditor.

25 (d) In addition to the basic and additional compensation
26 provided in sections two and three of this article, the
27 chairpersons of the committees on finance and committees on

28 the judiciary of the respective houses and up to six additional
29 persons from each house, to be named by the presiding
30 officer, shall each receive an additional compensation of one
31 hundred fifty dollars per day up to a maximum of thirty days
32 for attending to legislative business when the Legislature is
33 not in regular, extended or extraordinary session and interim
34 committees are not meeting.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

1 (a) Each member of the Legislature is entitled to be
2 reimbursed, upon submission of an expense voucher, for
3 expenses incurred incident to travel in the performance of his
4 or her duties as a member of the Legislature or any
5 committee of the Legislature, whether the committee is
6 operating under general law or resolution, including, but not
7 limited to, attendance at party caucuses held in advance of
8 the date of the assembly of the Legislature in regular session
9 in odd-numbered years for the purpose of selecting
10 candidates for officers of the two houses, at a rate equal to
11 that paid by the travel management office of the Department
12 of Administration for the most direct usually traveled route,
13 if travel is by private automobile, or for actual transportation
14 costs for direct route travel, if travel is by public carrier, or
15 for any combination of those means of transportation actually
16 used, plus the cost of necessary taxi or limousine service,
17 tolls and parking fees in connection with the travel, but
18 during any regular, extension of regular or extraordinary
19 session, travel expenses shall not be paid to any member for
20 more than one round trip to and from the seat of government
21 and to and from his or her place of residence for each week
22 of the session.

23 (b) In addition to the travel expense in subsection (a) of
24 this section, the President of the Senate and the Speaker of

25 the House of Delegates are entitled to be reimbursed as
26 provided in subsection (a) of this section, upon submission of
27 an expense voucher, for expenses incurred incident to travel
28 which is related to their duties as presiding officers of the
29 respective houses of the Legislature, but which takes place
30 when the Legislature is not in regular, extension of regular or
31 extraordinary session and interim committees are not
32 meeting.

33 (c) The rate paid for mileage pursuant to this section may
34 change from time to time in accordance with changes in the
35 reimbursement rates established by the travel management
36 office of the Department of Administration, or its successor
37 agency.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

1 (a) Each member of the Legislature who does not
2 commute daily shall receive the sum of one hundred thirty-
3 one dollars per day as per diem allowance in connection with
4 any regular, extended, extraordinary session, interim
5 assignment or for any member authorized by the presiding
6 officer. Any member of the Legislature who does commute
7 daily shall receive the sum of fifty-five dollars per day as the
8 per diem allowance and, in addition to the allowance, shall be
9 reimbursed for overnight commuting expenses at the mileage
10 rate equal to the amount paid by the travel management
11 office of the Department of Administration for the most
12 direct usually traveled route, if travel is by private
13 automobile, or for actual transportation costs for direct route
14 travel, if travel is by public carrier, or for any combination of
15 the means of transportation actually used, plus the costs of
16 necessary taxi or limousine service, tolls and parking fees in
17 connection with the travel: *Provided*, That the total of this
18 per diem allowance plus travel expense for a daily
19 commuting member may not exceed one hundred thirty-one

20 dollars per day. The amount for mileage paid pursuant to this
21 subsection may change from time to time in accordance with
22 changes in the level of reimbursement by the travel
23 management office.

24 (b) The President of the Senate and the Speaker of the
25 House of Delegates, the chairman of the house committee on
26 finance, the chairman of the senate committee on finance, the
27 chairman of the house committee on the judiciary, the
28 chairman of the senate committee on the judiciary, and up to
29 six additional persons from each house designated by the
30 presiding officer pursuant to section four of this article, shall
31 be reimbursed for travel at the rate established in subsection
32 (a) of this section, and shall further receive the per diem
33 allowance established in the subsection in connection with
34 business which is related to their duties as officers at the
35 times when the Legislature is not in regular, extended or
36 extraordinary session, and interim committees are not
37 meeting.

**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 5. SALARY INCREASE FOR STATE
EMPLOYEES.**

**§5-5-2. Granting incremental salary increases based on years of
service.**

1 (a)(1) Every eligible employee with three or more years
2 of service shall receive an annual salary increase equal to
3 fifty dollars times the employee's years of service. In each
4 fiscal year and on the first day of July, each eligible

5 employee shall receive an annual increment increase of fifty
6 dollars for that fiscal year.

7 (2) For fiscal years beginning the first day of July, two
8 thousand eight, and each fiscal year thereafter, every eligible
9 employee with one or more years of service shall receive an
10 annual salary increase equal to sixty dollars times the
11 employee's years of service. In each fiscal year and on the
12 first day of July, each eligible employee shall receive an
13 annual increment increase of sixty dollars for that fiscal year.

14 (b)(1) Except as provided in subdivision (2) of this
15 subsection, every employee becoming newly eligible as a
16 result of meeting the three years of service minimum
17 requirement on the first day of July in any fiscal year is
18 entitled to the annual salary increase equal to fifty dollars
19 times the employee's years of service, where he or she has
20 not in a previous fiscal year received the benefit of an
21 increment computation. Thereafter, the employee shall
22 receive a single annual increment increase of fifty dollars for
23 each subsequent fiscal year.

24 (2) Every employee becoming newly eligible as a result
25 of meeting the three years of service minimum requirement
26 on the first day of July in any fiscal year subsequent to the
27 fiscal year ending the thirtieth day of June, two thousand
28 eight, is entitled to the annual salary increase equal to sixty
29 dollars times the employee's years of service, where he or
30 she has not in a previous fiscal year received the benefit of an
31 increment computation. Thereafter, the employee shall
32 receive a single annual increment increase of sixty dollars for
33 each subsequent fiscal year.

34 (c) These incremental increases are in addition to any
35 across-the-board, cost-of-living or percentage salary
36 increases which may be granted in any fiscal year by the
37 Legislature.

38 (d) This section shall not be construed to prohibit other
39 pay increases based on merit, seniority, promotion or other
40 reason, if funds are available for the other pay increases:
41 *Provided*, That the executive head of each spending unit shall
42 first grant the mandated increase in compensation in this
43 section to all eligible employees prior to the consideration of
44 any increases based on merit, seniority, promotion or other
45 reason.

CHAPTER 143

**(Com. Sub. for S.B. 781 - By Senators Helmick, Sharpe, Plymale,
Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe,
Unger, Sypolt, Fanning, Facemyer, Boley, Sprouse and Guills)**

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §38-5B-4 of said code; and to amend and reenact §59-1-11 of said code, all relating to service of suggestee execution and notice; and clarifying certain fees assessed by circuit clerks.

Be it enacted by the Legislature of West Virginia:

That §38-5A-4 and §38-5A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §38-5B-4 of said code be amended and reenacted; and that §59-1-11 of said code be amended and reenacted, all to read as follows:

Chapter

38. Liens.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 38. LIENS.**Article**

- 5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.**
- 5B. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.**

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

- §38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.
- §38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

1 A certified copy of an execution issued under this article
2 against salary or wages shall be served upon the judgment
3 debtor. Such service shall be made by the court or the clerk
4 of the court who issued the execution by mailing the copy to
5 the judgment debtor or his or her agent authorized to accept
6 service of process by certified mail, return receipt requested.
7 The day and hour of such mailing shall be clearly noted on
8 the face of the original execution and the clerk of the court or
9 the officer to whom it is delivered for collection shall not
10 make service upon the suggestee until the expiration of five
11 days from that time.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

1 (a) Service of a suggestee execution against salary or
2 wages may be made by the clerk of the circuit court or the
3 magistrate court clerk, as the case may be, by sending a copy

4 of the suggestee execution to the suggestee by certified mail,
5 return receipt requested, with delivery restricted to the
6 addressee as provided by subdivision (1), section (d) of rule
7 four of the Rules of Civil Procedure for trial courts of record.
8 If the registered mail is unclaimed or otherwise is not
9 accepted or is refused by the suggestee, then service of the
10 suggestee execution shall be made in the same manner as a
11 summons commencing an action is served in accordance with
12 the Rules of Civil Procedure for trial courts of record:
13 *Provided*, That if the suggestee is located in a county other
14 than the county where the suggestee execution issues, the
15 clerk may mail the suggestee execution by first class mail to
16 the sheriff of the other county for such service. If the service
17 is made on a corporation, limited liability company or other
18 person or entity through the Secretary of State, it shall be
19 submitted along with the fee required by section two, article
20 one, chapter fifty-nine of this code.

21 (b) If the suggestee served with the execution is indebted
22 or will in the future become indebted to the judgment debtor
23 for salary or wages, then during the time the execution
24 remains a lien on any indebtedness for salary and wages the
25 suggestee is required to pay over to the officer serving the
26 same or to the judgment creditor the percentage of the
27 indebtedness required by section three of this article until the
28 execution is wholly satisfied. The suggestee shall deduct the
29 amounts paid from the amounts payable to the judgment
30 debtor as salary or wages and the deduction of these amounts
31 is a bar to any further action by the judgment creditor against
32 the wages or salary of the judgment debtor.

33 (c) Once every ninety days during the life of such
34 execution and any renewal execution the suggestee upon
35 whom the execution or any renewal execution is served shall
36 pay over to the officer who served the same or to the
37 judgment creditor the full amount of money held or retained
38 pursuant to such execution or renewal execution during the
39 preceding ninety days.

40 If the suggestee upon whom the execution is served fails
41 or refuses to pay over to the officer serving the execution or
42 to the judgment creditor the required percentage of the
43 indebtedness, as aforesaid, he or she shall be liable to an
44 action therefor by the judgment creditor named in the
45 execution and the amount recovered in the action shall be
46 applied in satisfaction of the execution.

**ARTICLE 5B. SUGGESTION OF THE STATE AND
POLITICAL SUBDIVISIONS;
GARNISHMENT AND SUGGESTION
OF PUBLIC OFFICERS.**

**§38-5B-4. Notice to judgment debtor of execution against salary
or wages; time for service on officer of suggestee.**

1 A certified copy of an execution issued under this article
2 against salary or wages shall be served by the clerk of the
3 court who issued the execution upon the judgment debtor or
4 his or her agent authorized to accept service of process, by
5 certified mail, return receipt requested. The day and hour of
6 mailing shall be clearly noted on the face of the original
7 execution and the officer to whom it is delivered for
8 collection shall not make service upon the proper officer until
9 the expiration of five days from that time.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered by the clerk the following fees which shall
3 be paid in advance by the parties for whom services are to be
4 rendered:

5 (1) For instituting any civil action under the Rules of
6 Civil Procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals or any
8 other action, cause, suit or proceeding, one hundred forty-five
9 dollars, of which thirty dollars of that amount shall be
10 deposited in the Courthouse Facilities Improvement Fund
11 created by section six, article twenty-six, chapter twenty-nine
12 of this code and ten dollars shall be deposited in the special
13 revenue account created in section six hundred three, article
14 twenty-six, chapter forty-eight of this code to provide legal
15 services for domestic violence victims;

16 (2) For instituting an action for medical professional
17 liability, two hundred sixty dollars, of which ten dollars of
18 that amount shall be deposited in the Courthouse Facilities
19 Improvement Fund created by section six, article twenty-six,
20 chapter twenty-nine of this code;

21 (3) Beginning on and after the first day of July, one
22 thousand nine hundred ninety-nine, for instituting an action
23 for divorce, separate maintenance or annulment, one hundred
24 thirty-five dollars;

25 (4) For petitioning for the modification of an order
26 involving child custody, child visitation, child support or
27 spousal support, eighty-five dollars; and

28 (5) For petitioning for an expedited modification of a
29 child support order, thirty-five dollars.

30 (b) In addition to the foregoing fees, the following fees
31 shall likewise be charged and collected:

32 (1) For preparing an abstract of judgment, five dollars;

33 (2) For any transcript, copy or paper made by the clerk
34 for use in any other court or otherwise to go out of the office,
35 for each page, fifty cents;

36 (3) For issuing a suggestion and serving notice to the
37 debtor by certified mail, twenty-five dollars;

38 (4) For issuing an execution, twenty-five dollars;

39 (5) For issuing or renewing a suggestee execution and
40 serving notice to the debtor by certified mail, twenty-five
41 dollars;

42 (6) For vacation or modification of a suggestee execution,
43 one dollar;

44 (7) For docketing and issuing an execution on a transcript
45 of judgment from magistrate court, three dollars;

46 (8) For arranging the papers in a certified question, writ
47 of error, appeal or removal to any other court, ten dollars, of
48 which five dollars of that amount shall be deposited in the
49 Courthouse Facilities Improvement Fund created by section
50 six, article twenty-six, chapter twenty-nine of this code;

51 (9) For postage and express and for sending or receiving
52 decrees, orders or records, by mail or express, three times the
53 amount of the postage or express charges;

54 (10) For each subpoena, on the part of either plaintiff or
55 defendant, to be paid by the party requesting the same, fifty
56 cents;

57 (11) For additional service (plaintiff or appellant) where
58 any case remains on the docket longer than three years, for
59 each additional year or part year, twenty dollars; and

60 (12) For administering funds deposited into a federally
61 insured interest-bearing account or interest-bearing
62 instrument pursuant to a court order, fifty dollars, to be
63 collected from the party making the deposit. A fee collected
64 pursuant to this subdivision shall be paid into the general
65 county fund.

66 (c) The clerk shall tax the following fees for services in
67 any criminal case against any defendant convicted in such
68 court:

69 (1) In the case of any misdemeanor, eighty-five dollars;
70 and

71 (2) In the case of any felony, one hundred five dollars, of
72 which ten dollars of that amount shall be deposited in the
73 Courthouse Facilities Improvement Fund created by section
74 six, article twenty-six, chapter twenty-nine of this code.

75 (d) The clerk of a circuit court shall charge and collect a
76 fee of twenty-five dollars per bond for services rendered by
77 the clerk for processing of criminal bonds and the fee shall be
78 paid at the time of issuance by the person or entity set forth
79 below:

80 (1) For cash bonds, the fee shall be paid by the person
81 tendering cash as bond;

82 (2) For recognizance bonds secured by real estate, the fee
83 shall be paid by the owner of the real estate serving as surety;

84 (3) For recognizance bonds secured by a surety company,
85 the fee shall be paid by the surety company;

86 (4) For ten-percent recognizance bonds with surety, the
87 fee shall be paid by the person serving as surety; and

88 (5) For ten-percent recognizance bonds without surety,
89 the fee shall be paid by the person tendering ten percent of
90 the bail amount.

91 In instances in which the total of the bond is posted by
92 more than one bond instrument, the above fee shall be
93 collected at the time of issuance of each bond instrument

94 processed by the clerk and all fees collected pursuant to this
95 subsection shall be deposited in the Courthouse Facilities
96 Improvement Fund created by section six, article twenty-six,
97 chapter twenty-nine of this code. Nothing in this subsection
98 may be construed as authorizing the clerk to collect the above
99 fee from any person for the processing of a personal
100 recognizance bond.

101 (e) The clerk of a circuit court shall charge and collect a
102 fee of ten dollars for services rendered by the clerk for
103 processing of bailpiece and the fee shall be paid by the surety
104 at the time of issuance. All fees collected pursuant to this
105 subsection shall be deposited in the Courthouse Facilities
106 Improvement Fund created by section six, article twenty-six,
107 chapter twenty-nine of this code.

108 (f) No clerk shall be required to handle or accept for
109 disbursement any fees, cost or amounts of any other officer
110 or party not payable into the county treasury except on
111 written order of the court or in compliance with the
112 provisions of law governing such fees, costs or accounts.

CHAPTER 144

**(Com. Sub. for S.B. 234 - By Senators Prezioso, Foster, Hunter,
Sharpe, Stollings, Boley, Caruth, Jenkins and Kessler)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §48-25A-1,
§48-25A-2 and §48-25A-3, all relating to the creation of a
Maternal Mortality Review Team; establishing its members and

responsibilities; and giving the Bureau of Public Health rule-making authority for the team.

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 §48-25A-1, §48-25A-2 and §48-25A-3, all to read as follows:

§48-25A-1. Legislative findings.

§48-25A-2. Maternal Mortality Review Team.

§48-25A-3. Responsibilities of the Maternal Mortality Review Team.

ARTICLE 25A. MATERNAL MORTALITY REVIEW TEAM.

§48-25A-1. Legislative findings.

1 The Legislature finds that there is a need for a process to
2 study the causes of maternal deaths. It has been found that
3 comprehensive studies indicate that maternal mortalities are
4 more extensive than first appear on death certificates. The
5 Legislature finds that more extensive studies would enable a
6 more fully developed plan to avoid these deaths in the future.

§48-25A-2. Maternal Mortality Review Team.

1 (a) The Maternal Mortality Review Team is hereby
2 established under the office of Maternal Child and Family
3 Health. The Maternal Mortality Review Team is a
4 multidisciplinary team created to review the deaths of women
5 who die during pregnancy, at the time of birth or within one
6 year of the birth of a child.

7 (b) The Maternal Mortality Review Team is to consist of
8 the following members, appointed by the Governor:

9 (1) The Director of the office of Maternal Child and
10 Family Health, who is to serve as the chairperson of the

11 Maternal Mortality Review Team and is responsible for
12 calling and coordinating all meetings;

13 (2) The Commissioner of the Bureau for Public Health or
14 a designee;

15 (3) The Chief Medical Examiner in the Bureau of Public
16 Health or a designee;

17 (4) The Director of the Division of Vital Statistics or a
18 designee;

19 (5) Representation from each of the three medical schools
20 in the state;

21 (6) The Director of Obstetrics, the Director of the
22 Neonatal Intensive Care Unit and the Director of Pediatrics
23 at each of the tertiary care hospitals in the state;

24 (7) One representative of the West Virginia State Medical
25 Association;

26 (8) One representative of the West Virginia Nurses
27 Association;

28 (9) One representative of the West Virginia Society of
29 Osteopathic Medicine;

30 (10) One representative of West Virginia Academy of
31 Family Physicians;

32 (11) One representative of the West Virginia Chapter of
33 the American College of Nurse Midwives;

34 (12) One representative of the West Virginia Chapter of
35 the American College of Obstetrics and Gynecology;

36 (13) One representative of the West Virginia Chapter of
37 the American Academy of Pediatrics;

38 (14) The Director of the Child Fatality Review Team; and

39 (15) Any additional person that the chair of the team
40 determines is needed on a particular case being considered.

41 (c) Each member shall serve for a term of five years. Of
42 the members of the commission first appointed, one shall be
43 appointed for a term ending the thirtieth day of June, two
44 thousand nine, and one each for terms ending one, two, three
45 and four years thereafter.

46 (d) Members of the Maternal Mortality Review Team
47 shall, unless sooner removed, continue to serve until their
48 respective terms expire and until their successors have been
49 appointed and have qualified.

50 (e) An appointment of a physician, whether for a full
51 term or to fill a vacancy, is to be made by the Governor from
52 among three nominees selected by the West Virginia State
53 Medical Association or the organization to be represented on
54 the team. When an appointment is for a full term, the
55 nomination is to be submitted to the Governor not later than
56 eight months prior to the date on which the appointment is to
57 become effective. In the case of an appointment to fill a
58 vacancy, the nominations are to be submitted to the Governor
59 within thirty days after the request for the nomination has
60 been made by the Governor to the chairperson or president of
61 the organization. When an association fails to submit to the
62 Governor nominations for the appointment in accordance
63 with the requirements of this section, the Governor may make
64 the appointment without nominations.

65 (f) Each member of the Maternal Mortality Review Team
66 shall serve without additional compensation and may not be

67 reimbursed for any expenses incurred in the discharge of his
68 or her duties under the provisions of this article.

§48-25A-3. Responsibilities of the Maternal Mortality Review Team.

1 (a) The Bureau of Public Health in consultation with the
2 Maternal Mortality Review Team shall, pursuant to the
3 provisions of article three, chapter twenty-nine-a, promulgate
4 rules applicable to the following:

5 (1) The standard procedures for the establishment,
6 formation and conduct of the Maternal Mortality Review
7 Team; and

8 (2) The protocols for the review of maternal mortalities.

9 (b) The Maternal Mortality Review Team shall:

10 (1) Review all deaths of women who die during
11 pregnancy, at the time of birth or within one year of the birth
12 of a child;

13 (2) Establish the trends, patterns and risk factors;

14 (3) Provide statistical analysis regarding the causes of
15 maternal fatalities in West Virginia; and

16 (4) Promote public awareness of the incidence and causes
17 of maternal fatalities, including recommendations for their
18 reduction.

19 (c) The Maternal Mortality Review Team shall submit an
20 annual report to the Governor and to the Legislature
21 concerning its activities and the incidents of maternal
22 fatalities within the state. The report is due annually on the
23 first day of December. The report is to include statistics

24 setting forth the number of maternal fatalities, identifiable
25 trends in maternal fatalities in the state, including possible
26 causes, if any, and recommendations to reduce the number of
27 preventable maternal fatalities in the state. The report is to
28 also include the number of mothers whose deaths have been
29 determined to have been unexpected or unexplained.

30 (d) The Maternal Mortality Review Team, in the exercise
31 of its duties as defined in this section, may not:

32 (1) Call witnesses or take testimony from individuals
33 involved in the investigation of a maternal fatality;

34 (2) Contact a family member of the deceased mother,
35 except if a member of the team is involved in the
36 investigation of the death and must contact a family member
37 in the course of performing his or her duties outside of the
38 team; or

39 (3) Enforce any public health standard or criminal law or
40 otherwise participate in any legal proceeding, except if a
41 member of the team is involved in the investigation of the
42 death or resulting prosecution and must participate in a legal
43 proceeding in the course of performing in his or her duties
44 outside of the team.

45 (e) Proceedings, records and opinions of the Maternal
46 Mortality Review Team are confidential, in accordance with
47 section one, article seven, chapter forty-nine of this code, and
48 are not subject to discovery, subpoena or introduction into
49 evidence in any civil or criminal proceeding. Nothing in this
50 subsection is to be construed to limit or restrict the right to
51 discover or use in any civil or criminal proceeding anything
52 that is available from another source and entirely independent
53 of the proceedings of the Maternal Mortality Review Team.

54 (f) Members of the Maternal Mortality Review Team
55 may not be questioned in any civil or criminal proceeding

56 regarding information presented in or opinions formed as a
57 result of a meeting of the team. Nothing in this subsection
58 may be construed to prevent a member of the Maternal
59 Mortality Review Team from testifying to information
60 obtained independently of the team or which is public
61 information.



CHAPTER 145

(Com. Sub. for S.B. 481 - By Senator Prezioso)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §27-5-2 of the Code of West Virginia, 1931, as amended, relating to authority of physician assistants to conduct examinations in the mental health hygiene process.

Be it enacted by the Legislature of West Virginia:

That §27-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) Any adult person may make an application for
2 involuntary hospitalization for examination of an individual
3 when the person making the application has reason to believe

4 that the individual to be examined is addicted, as defined in
5 section eleven, article one of this chapter, or is mentally ill
6 and, because of his or her addiction or mental illness, the
7 individual is likely to cause serious harm to himself, herself
8 or to others if allowed to remain at liberty while awaiting an
9 examination and certification by a physician or psychologist.

10 Notwithstanding any language in this subsection to the
11 contrary, if the individual to be examined under the
12 provisions of this section is incarcerated in a jail, prison or
13 other correctional facility, then only the chief administrative
14 officer of the facility holding the individual may file the
15 application and the application must include the additional
16 statement that the correctional facility itself cannot
17 reasonably provide treatment and other services for the
18 individual's mental illness or addiction.

19 (b) The person making the application shall make the
20 application under oath.

21 (c) Application for involuntary custody for examination
22 may be made to the circuit court or a mental hygiene
23 commissioner of the county in which the individual resides
24 or of the county in which he or she may be found. When no
25 circuit court judge or mental hygiene commissioner is
26 available for immediate presentation of the application, the
27 application may be made to a magistrate designated by the
28 chief judge of the judicial circuit to accept applications and
29 hold probable cause hearings. A designated magistrate
30 before whom an application or matter is pending may, upon
31 the availability of a mental hygiene commissioner or circuit
32 court judge for immediate presentation of an application or
33 pending matter, transfer the pending matter or application to
34 the mental hygiene commissioner or circuit court judge for
35 further proceedings unless otherwise ordered by the chief
36 judge of the judicial circuit.

37 (d) The person making the application shall give
38 information and state facts in the application as may be
39 required by the form provided for this purpose by the
40 Supreme Court of Appeals.

41 (e) The circuit court, mental hygiene commissioner or
42 designated magistrate may enter an order for the individual
43 named in the application to be detained and taken into
44 custody for the purpose of holding a probable cause hearing
45 as provided in subsection (g) of this section for the purpose
46 of an examination of the individual by a physician,
47 psychologist, a licensed independent clinical social worker
48 practicing in compliance with article thirty, chapter thirty of
49 this code, an advanced nurse practitioner with psychiatric
50 certification practicing in compliance with article seven of
51 said chapter, a physician assistant practicing in compliance
52 with article three of said chapter or a physician assistant
53 practicing in compliance with article fourteen-a of said
54 chapter: *Provided*, That a licensed independent clinical social
55 worker, a physician assistant or an advanced nurse
56 practitioner with psychiatric certification may only perform
57 the examination if he or she has previously been authorized
58 by an order of the circuit court to do so, the order having
59 found that the licensed independent clinical social worker,
60 physician assistant or advanced nurse practitioner with
61 psychiatric certification has particularized expertise in the
62 areas of mental health and mental hygiene or addiction
63 sufficient to make the determinations as are required by the
64 provisions of this section. The examination is to be provided
65 or arranged by a community mental health center designated
66 by the Secretary of the Department of Health and Human
67 Resources to serve the county in which the action takes place.
68 The order is to specify that the hearing be held forthwith and
69 is to provide for the appointment of counsel for the
70 individual: *Provided, however*, That the order may allow the
71 hearing to be held up to twenty-four hours after the person to
72 be examined is taken into custody rather than forthwith if the

73 circuit court of the county in which the person is found has
74 previously entered a standing order which establishes within
75 that jurisdiction a program for placement of persons awaiting
76 a hearing which assures the safety and humane treatment of
77 persons: *Provided further*, That the time requirements set
78 forth in this subsection only apply to persons who are not in
79 need of medical care for a physical condition or disease for
80 which the need for treatment precludes the ability to comply
81 with the time requirements. During periods of holding and
82 detention authorized by this subsection, upon consent of the
83 individual or in the event of a medical or psychiatric
84 emergency, the individual may receive treatment. The
85 medical provider shall exercise due diligence in determining
86 the individual's existing medical needs and provide treatment
87 the individual requires, including previously prescribed
88 medications. As used in this section, "psychiatric
89 emergency" means an incident during which an individual
90 loses control and behaves in a manner that poses substantial
91 likelihood of physical harm to himself, herself or others.
92 Where a physician, psychologist, licensed independent
93 clinical social worker, physician assistant or advanced nurse
94 practitioner with psychiatric certification has within the
95 preceding seventy-two hours performed the examination
96 required by the provisions of this subdivision, the community
97 mental health center may waive the duty to perform or
98 arrange another examination upon approving the previously
99 performed examination. Notwithstanding the provisions of
100 this subsection, subsection (r), section four of this article
101 applies regarding payment by the county commission for
102 examinations at hearings. If the examination reveals that the
103 individual is not mentally ill or addicted or is determined to
104 be mentally ill or addicted but not likely to cause harm to
105 himself, herself or others, the individual shall be immediately
106 released without the need for a probable cause hearing and
107 absent a finding of professional negligence the examiner is
108 not civilly liable for the rendering of the opinion absent a
109 finding of professional negligence. The examiner shall

110 immediately provide the mental hygiene commissioner,
111 circuit court or designated magistrate before whom the matter
112 is pending the results of the examination on the form
113 provided for this purpose by the Supreme Court of Appeals
114 for entry of an order reflecting the lack of probable cause.

115 (f) A probable cause hearing is to be held before a
116 magistrate designated by the chief judge of the judicial
117 circuit, the mental hygiene commissioner or circuit judge of
118 the county of which the individual is a resident or where he
119 or she was found. If requested by the individual or his or her
120 counsel, the hearing may be postponed for a period not to
121 exceed forty-eight hours.

122 The individual must be present at the hearing and has the
123 right to present evidence, confront all witnesses and other
124 evidence against him or her and to examine testimony
125 offered, including testimony by representatives of the
126 community mental health center serving the area. Expert
127 testimony at the hearing may be taken telephonically or via
128 videoconferencing. The individual has the right to remain
129 silent and to be proceeded against in accordance with the
130 Rules of Evidence of the Supreme Court of Appeals, except
131 as provided in section twelve, article one of this chapter. At
132 the conclusion of the hearing, the magistrate, mental hygiene
133 commissioner or circuit court judge shall find and enter an
134 order stating whether or not there is probable cause to believe
135 that the individual, as a result of mental illness or addiction,
136 is likely to cause serious harm to himself or herself or to
137 others.

138 (g) Probable cause hearings may occur in the county
139 where a person is hospitalized. The judicial hearing officer
140 may: Use videoconferencing and telephonic technology;
141 permit persons hospitalized for addiction to be involuntarily
142 hospitalized only until detoxification is accomplished; and
143 specify other alternative or modified procedures that are

144 consistent with the purposes and provisions of this article.
145 The alternative or modified procedures shall fully and
146 effectively guarantee to the person who is the subject of the
147 involuntary commitment proceeding and other interested
148 parties due process of the law and access to the least
149 restrictive available treatment needed to prevent serious harm
150 to self or others.

151 (h) If the magistrate, mental hygiene commissioner or
152 circuit court judge at a probable cause hearing or at a final
153 commitment hearing held pursuant to the provisions of
154 section four of this article finds that the individual, as a result
155 of mental illness or addiction, is likely to cause serious harm
156 to himself, herself or others and because of mental illness or
157 addiction requires treatment, the magistrate, mental hygiene
158 commissioner or circuit court judge may consider evidence
159 on the question of whether the individual's circumstances
160 make him or her amenable to outpatient treatment in a
161 nonresidential or nonhospital setting pursuant to a voluntary
162 treatment agreement. The agreement is to be in writing and
163 approved by the individual, his or her counsel and the
164 magistrate, mental hygiene commissioner or circuit court
165 judge. If the magistrate, mental hygiene commissioner or
166 circuit court judge determines that appropriate outpatient
167 treatment is available in a nonresidential or nonhospital
168 setting, the individual may be released to outpatient treatment
169 upon the terms and conditions of the voluntary treatment
170 agreement. The failure of an individual released to outpatient
171 treatment pursuant to a voluntary treatment agreement to
172 comply with the terms of the voluntary treatment agreement
173 constitutes evidence that outpatient treatment is insufficient
174 and, after a hearing before a magistrate, mental hygiene
175 commissioner or circuit judge on the issue of whether or not
176 the individual failed or refused to comply with the terms and
177 conditions of the voluntary treatment agreement and whether
178 the individual as a result of mental illness or addiction
179 remains likely to cause serious harm to himself, herself or

180 others, the entry of an order requiring admission under
181 involuntary hospitalization pursuant to the provisions of
182 section three of this article may be entered. In the event a
183 person released pursuant to a voluntary treatment agreement
184 is unable to pay for the outpatient treatment and has no
185 applicable insurance coverage, including, but not limited to,
186 private insurance or Medicaid, the Secretary of the
187 Department of Health and Human Resources may transfer
188 funds for the purpose of reimbursing community providers
189 for services provided on an outpatient basis for individuals
190 for whom payment for treatment is the responsibility of the
191 department: *Provided*, That the department may not authorize
192 payment of outpatient services for an individual subject to a
193 voluntary treatment agreement in an amount in excess of the
194 cost of involuntary hospitalization of the individual. The
195 secretary shall establish and maintain fee schedules for
196 outpatient treatment provided in lieu of involuntary
197 hospitalization. Nothing in the provisions of this article
198 regarding release pursuant to a voluntary treatment
199 agreement or convalescent status may be construed as
200 creating a right to receive outpatient mental health services or
201 treatment or as obligating any person or agency to provide
202 outpatient services or treatment. Time limitations set forth in
203 this article relating to periods of involuntary commitment to
204 a mental health facility for hospitalization do not apply to
205 release pursuant to the terms of a voluntary treatment
206 agreement: *Provided, however*, That release pursuant to a
207 voluntary treatment agreement may not be for a period of
208 more than six months if the individual has not been found to
209 be involuntarily committed during the previous two years and
210 for a period of no more than two years if the individual has
211 been involuntarily committed during the preceding two years.
212 If in any proceeding held pursuant to this article the
213 individual objects to the issuance or conditions and terms of
214 an order adopting a voluntary treatment agreement, then the
215 circuit judge, magistrate or mental hygiene commissioner
216 may not enter an order directing treatment pursuant to a

217 voluntary treatment agreement. If involuntary commitment
218 with release pursuant to a voluntary treatment agreement is
219 ordered, the individual subject to the order may, upon request
220 during the period the order is in effect, have a hearing before
221 a mental hygiene commissioner or circuit judge where the
222 individual may seek to have the order canceled or modified.
223 Nothing in this section affects the appellate and habeas
224 corpus rights of any individual subject to any commitment
225 order.

226 (i) If the certifying physician or psychologist determines
227 that a person requires involuntary hospitalization for an
228 addiction to a substance which, due to the degree of
229 addiction, creates a reasonable likelihood that withdrawal or
230 detoxification from the substance of addiction will cause
231 significant medical complications, the person certifying the
232 individual shall recommend that the individual be closely
233 monitored for possible medical complications. If the
234 magistrate, mental hygiene commissioner or circuit court
235 judge presiding orders involuntary hospitalization, he or she
236 shall include a recommendation that the individual be closely
237 monitored in the order of commitment.

238 (j) The Supreme Court of Appeals and the Secretary of
239 the Department of Health and Human Resources shall
240 specifically develop and propose a statewide system for
241 evaluation and adjudication of mental hygiene petitions
242 which shall include payment schedules and recommendations
243 regarding funding sources. Additionally, the Secretary of the
244 Department of Health and Human Resources shall also
245 immediately seek reciprocal agreements with officials in
246 contiguous states to develop interstate/intergovernmental
247 agreements to provide efficient and efficacious services to
248 out-of-state residents found in West Virginia and who are in
249 need of mental hygiene services.

CHAPTER 146

**(Com. Sub. for S.B. 634 - By Senators Hunter, Helmick,
Plymale, Minard, Kessler and Unger)**

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all relating to the West Virginia Military Authority Act; authorizing the authority to administer programs and receive funds; and giving the authority certain powers and duties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-1J-1, §15-1J-2, §15-1J-3, §15-1J-4 and §15-1J-5, all to read as follows:

**ARTICLE 1J. THE WEST VIRGINIA MILITARY
AUTHORITY ACT.**

§15-1J-1. Short title.

§15-1J-2. Legislative findings.

§15-1J-3. Definitions.

§15-1J-4. Establishment and general powers of the authority.

§15-1J-5. Employees.

§15-1J-1. Short title.

- 1 This article shall be known and may be cited as the West
- 2 Virginia Military Authority Act.

§15-1J-2. Legislative findings.

1 The Legislature finds that the West Virginia National
2 Guard is a unique entity that has a dual mission for both West
3 Virginia and the United States. In this dual capacity, the
4 West Virginia National Guard receives funds to administer
5 programs, including the hiring of employees, that the federal
6 government, including the Department of Defense, provides
7 to the guard in support of specific activities for various
8 federal agencies for national security and homeland security
9 purposes. These programs fulfill specific agency purposes
10 and necessarily require continued funding by the federal
11 government.

12 Additionally, the guard continues to receive federal
13 funding to develop and maintain capabilities to house,
14 refurbish, rebuild and maintain military equipment and
15 conduct other test and operational activities to support
16 national and homeland security objectives. These activities
17 require the guard to hire persons who will be compensated,
18 in whole or in part, with federal funds. It is further
19 determined and declared that it is necessary for the guard to
20 develop and implement a procedure for hiring and
21 management of nonmilitary employees to support its specific
22 missions.

§15-1J-3. Definitions.

1 As used in this article, unless the content clearly indicates
2 otherwise:

3 (a) “Authority” means the West Virginia Military
4 Authority.

5 (b) “BRIM” means the West Virginia Board of Risk
6 Management.

7 (c) "Guard" means West Virginia National Guard,
8 including its Army and Air components.

9 (d) "Employee" means any person who, within the at-will
10 employment relationship, is hired, performs duties and is paid
11 a wage or salary which cost is, in whole or in part,
12 reimbursed by the federal government pursuant to a contract
13 or memorandum of understanding between the federal
14 government and the guard.

15 (e) "PEIA" means Public Employees Insurance Act.

16 (f) "PERS" means Public Employee's Retirement
17 System.

§15-1J-4. Establishment and general powers of the authority.

1 (a) The West Virginia Military Authority is hereby
2 established to administer national security, homeland security
3 and other military-related programs that provide for the
4 reimbursement, in whole or in part, of employee wages or
5 salaries pursuant to a contract or memorandum of
6 understanding between the federal government and the guard.
7 The authority to administer programs granted in this
8 subsection shall terminate when federal funds are no longer
9 available to provide reimbursement of salaries or wages.

10 (b) The authority will be administered by the Adjutant
11 General and the Adjutant General's department.

12 (c) Funds provided by the federal government and any
13 state funds authorized by appropriation of the Legislature
14 used as a required match to secure federal funding for
15 programs administered by the authority pursuant to this
16 section shall be administered by the Adjutant General subject
17 to the provisions of article eleven, chapter four of this code.

18 (d) Except as otherwise prohibited by statute, the
19 authority, as a governmental instrumentality exercising
20 public powers of the state, shall have and may exercise all
21 powers necessary or appropriate to carry out the purpose of
22 this article, including the authority to:

23 (1) Execute cooperative agreements between the guard
24 and the federal and/or state governments;

25 (2) Contract on behalf of the guard with the federal
26 government, its instrumentalities and agencies, the state, its
27 agencies and instrumentalities, municipalities, foreign
28 governments, public bodies, private corporations,
29 partnerships, associations and individuals;

30 (3) Use funds administered by the authority pursuant to
31 subsection (c) of this section for the maintenance,
32 construction or reconstruction of capital repair and
33 replacement items as necessary and approved by the
34 authority;

35 (4) Procure insurance with state funds through BRIM
36 covering property and other assets of the authority in
37 amounts and from insurers that BRIM determines necessary;

38 (5) Hire employees at an appropriate salary equivalent to
39 a competitive wage rate;

40 (6) Enroll employees in PERS, PEIA and workers'
41 compensation and unemployment programs, or their
42 equivalents: *Provided*, That the authority, through the receipt
43 of federal and/or state funds, pays the required employer
44 contributions;

45 (7) Cooperate with economic development agencies in
46 efforts to promote the expansion of industrial, commercial
47 and manufacturing in the state;

48 (8) Develop a human resources division that will
49 administer and manage its employees and receive state
50 matching funds as necessary to ensure maximum federal
51 funds are secured;

52 (9) Due to the at-will employment relationship with the
53 authority, its employees may not avail themselves of the state
54 grievance procedure as set forth in article six-a, chapter
55 twenty-nine of this code; and

56 (10) Have the ability to secure all other bonding,
57 insurance or other liability protections necessary for its
58 employees to fulfill their duties and responsibilities.

§15-1J-5. Employees.

1 (a) The authority shall have the power to hire, administer
2 and manage employees necessary to fulfill its responsibilities.

3 (1) All employees will be exempt from both the classified
4 services category and the classified exempt services category
5 as set forth in section four, article six, chapter twenty-nine of
6 this code.

7 (2) Employee positions are contingent on the receipt of
8 the necessary federal and/or state funds.

9 (3) Each employee hired shall be deemed an at-will
10 employee who may be discharged or released from his or her
11 respective position without cause or reason.

12 (4) Employees will participate in the PEIA, PERS and
13 workers' compensation and unemployment compensation
14 programs, or their equivalents. Public safety-related
15 positions will continue to require dual status membership as
16 outlined in section twenty-six, article one-b, chapter fifteen
17 of this code.

18 (b) The Adjutant General will set appropriate salary rates
19 for employees equivalent to a competitive wage rate
20 necessary to support a specific mission.

21 (c) Security guards and military firefighters hired by the
22 authority under the provisions of this article will continue to
23 have the same authority and must meet the requirements as
24 set forth in section twenty-two, article one-b, chapter fifteen
25 of this code and section twenty-six of said article.



CHAPTER 147

(Com. Sub. for S.B. 536 - By Senator Kessler)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §17A-3-23 of the Code of West Virginia, 1931, as amended, relating to exempting vehicles operated by probation officers under the Supreme Court of Appeals from registration requirements for state cars.

Be it enacted by the Legislature of West Virginia:

That §17A-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF
CERTIFICATES OF TITLE.**

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

1 (a) Any motor vehicle designed to carry passengers,
2 owned or leased by the State of West Virginia, or any of its
3 departments, bureaus, commissions or institutions, except
4 vehicles used by the Governor, Treasurer, three vehicles per
5 elected office of the board of Public Works, vehicles operated
6 by the State Police, not to exceed five vehicles operated by
7 the office of the Secretary of Military Affairs and Public
8 Safety, not to exceed five vehicles operated by the Division
9 of Homeland Security and Emergency Management, vehicles
10 operated by conservation officers of the Division of Natural
11 Resources, not to exceed ten vehicles operated by the arson
12 investigators of the office of State Fire Marshal, not to
13 exceed two vehicles operated by the Division of Protective
14 Services, not to exceed sixteen vehicles operated by
15 inspectors of the office of the Alcohol Beverage Control
16 Commissioner and vehicles operated by probation officers
17 employed under the Supreme Court of Appeals may not be
18 operated or driven by any person unless it has displayed and
19 attached to the front thereof, in the same manner as regular
20 motor vehicle registration plates are attached, a plate of the
21 same size as the regular registration plate, with white
22 lettering on a green background bearing the words "West
23 Virginia" in one line and the words "State Car" in another
24 line and the lettering for the words "State Car" shall be of
25 sufficient size to be plainly readable from a distance of one
26 hundred feet during daylight.

27 The vehicle shall also have attached to the rear a plate
28 bearing a number and any other words and figures as the
29 Commissioner of Motor Vehicles shall prescribe. The rear
30 plate shall also be green with the number in white.

31 (b) On registration plates issued to vehicles owned by
32 counties, the color shall be white on red with the word

33 "County" on top of the plate and the words "West Virginia"
34 on the bottom. On any registration plates issued to a city or
35 municipality, the color shall be white on blue with the word
36 "City" on top and the words "West Virginia" on the bottom:
37 *Provided*, That after the thirty-first day of December, two
38 thousand six, registration plates issued to a city or
39 municipality law-enforcement department shall include blue
40 lettering on a white background with the word "West
41 Virginia" on top of the plate and shall be further designed by
42 the commissioner to include a law-enforcement shield
43 together with other insignia or lettering sufficient to identify
44 the motor vehicle as a municipal law-enforcement
45 department motor vehicle. The colors may not be reversed
46 and shall be of reflectorized material. The registration plates
47 issued to counties, municipalities and other governmental
48 agencies authorized to receive colored plates hereunder shall
49 be affixed to both the front and rear of the vehicles. Every
50 municipality shall provide the commissioner with a list of
51 law-enforcement vehicles operated by the law-enforcement
52 department of the municipality, unless otherwise provided in
53 this section, and a fee of ten dollars for each vehicle
54 submitted by the first day of July, two thousand six.

55 (c) Registration plates issued to vehicles operated by
56 county sheriffs shall be designed by the commissioner in
57 cooperation with the sheriffs' association with the word
58 "Sheriff" on top of the plate and the words "West Virginia"
59 on the bottom. The plate shall contain a gold shield
60 representing the sheriff's star and a number assigned to that
61 plate by the commissioner. Every county sheriff shall
62 provide the commissioner with a list of vehicles operated by
63 the sheriff, unless otherwise provided in this section, and a
64 fee of ten dollars for each vehicle submitted by the first day
65 of July, two thousand two.

66 (d) The commissioner is authorized to designate the
67 colors and design of any other registration plates that are

68 issued without charge to any other agency in accordance with
69 the motor vehicle laws.

70 (e) Upon application, the commissioner is authorized to
71 issue a maximum of five Class A license plates per applicant
72 to be used by county sheriffs and municipalities on
73 law-enforcement vehicles while engaged in undercover
74 investigations.

75 (f) The commissioner is authorized to issue an unlimited
76 number of license plates per applicant to authorized drug and
77 violent crime task forces in the State of West Virginia when
78 the chairperson of the control group of a drug and violent
79 crime task force signs a written affidavit stating that the
80 vehicle or vehicles for which the plates are being requested
81 will be used only for official undercover work conducted by
82 a drug and violent crime task force.

83 (g) The commissioner is authorized to issue twenty Class
84 A license plates to the Criminal Investigation Division of the
85 Department of Revenue for use by its investigators.

86 (h) The commissioner may issue a maximum of ten Class
87 A license plates to the Division of Natural Resources for use
88 by conservation officers. The commissioner shall designate
89 the color and design of the registration plates to be displayed
90 on the front and the rear of all other state-owned vehicles
91 owned by the Division of Natural Resources and operated by
92 conservation officers.

93 (i) The commissioner is authorized to issue an unlimited
94 number of Class A license plates to the Commission on
95 Special Investigations for state-owned vehicles used for
96 official undercover work conducted by the Commission on
97 Special Investigations. The commissioner is authorized to
98 issue a maximum of two Class A plates to the Division of
99 Protective Services for state-owned vehicles used by the
100 Division of Protective Services in fulfilling its mission.

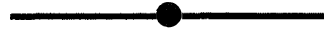
101 (j) No other registration plate may be issued for, or
102 attached to, any state-owned vehicle.

103 (k) The Commissioner of Motor Vehicles shall have a
104 sufficient number of both front and rear plates produced to
105 attach to all state-owned cars. The numbered registration
106 plates for the vehicles shall start with the number "five
107 hundred" and the commissioner shall issue consecutive
108 numbers for all state-owned cars.

109 (l) It is the duty of each office, department, bureau,
110 commission or institution furnished any vehicle to have
111 plates as described herein affixed thereto prior to the
112 operation of the vehicle by any official or employee.

113 (m) The commissioner may issue special registration
114 plates for motor vehicles titled in the name of the Division of
115 Public Transit or in the name of a public transit authority as
116 defined in this subsection and operated by a public transit
117 authority or a public transit provider to transport persons in
118 the public interest. For purposes of this subsection, "public
119 transit authority" means an urban mass transportation
120 authority created pursuant to the provisions of article
121 twenty-seven, chapter eight of this code or a nonprofit entity
122 exempt from federal and state income taxes under the
123 Internal Revenue Code and whose purpose is to provide mass
124 transportation to the public at large. The special registration
125 plate shall be designed by the commissioner and shall display
126 the words "public transit" or words or letters of similar effect
127 to indicate the public purpose of the use of the vehicle. The
128 special registration plate shall be issued without charge.

129 (n) Any person who violates the provisions of this section
130 is guilty of a misdemeanor and, upon conviction thereof,
131 shall be fined not less than fifty dollars nor more than one
132 hundred dollars. Magistrates have concurrent jurisdiction
133 with circuit courts for the enforcement of this section.



CHAPTER 148

(Com. Sub. for H.B. 4364 - By Delegates Schadler and Hrutkay)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-6E-2 of said code; and to amend and reenact §46A-3-109 of said code, all relating to motor vehicle dealers generally; allowing the Commissioner of the Division of Motor Vehicles to enter into agreements with other states to allow out-of-state dealers to issue vehicle registrations; expanding authority of Dealer Recovery Fund Control Board to consider claims against the fund; increasing minimum bond requirement for certain dealers from ten thousand dollars to twenty-five thousand dollars; establishing minimum number of sales by a dealer prior to renewal of a dealer's license and opportunity for appeal; exempting salespersons employed by dealers selling commercial vehicles, financial institutions and auctions from the requirement to obtain a salesperson license; requirements for issuing temporary registration plates; authorizing the commissioner to require participation in an electronic temporary plates or markers program as a precondition for issuance of temporary plates; and transferring to commissioner authority to set documentary or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, with the advice of the Motor Vehicle Dealers Advisory Board.

Be it enacted by the Legislature of West Virginia:

That §17A-6-1b, §17A-6-2a, §17A-6-4, §17A-6-7, §17A-6-15 and §17A-6-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-6E-2 of said code be amended and reenacted; and that §46A-3-109 of said code be amended and reenacted, all to read as follows:

Chapter

- 17A. **Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 46A. **West Virginia Consumer Credit and Protection Act.**

**CHAPTER 17A. MOTOR VEHICLE
ADMINISTRATION, REGISTRATION,
CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

Article

- 6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.**
- 6E. **Motor Vehicle Saleperson License.**

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS
OR DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

- §17A-6-1b. Dealers authorized to issue motor vehicle registration.
- §17A-6-2a. Dealer recovery fund created.
- §17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.
- §17A-6-7. When application to be made; expiration of license certificate; renewal.
- §17A-6-15. Temporary registration plates or markers.
- §17A-6-18a. Motor Vehicle Dealers Advisory Board.

§17A-6-1b. Dealers authorized to issue motor vehicle registration.

- 1 (a) Notwithstanding any other provision in this chapter,
- 2 the division may allow a licensed motor vehicle dealer as
- 3 defined in section one of this article, authority to issue or
- 4 transfer motor vehicle registrations for vehicles sold by the
- 5 dealer. The authority to issue and transfer motor vehicle

6 registrations shall be contingent upon the dealer collecting all
7 fees and taxes required for the titling and registration of
8 vehicles, receiving proof of insurance as described in
9 subsection (e), section three, article three of this chapter, and
10 if applicable receiving the receipt showing full payment of
11 personal property taxes in accordance with section three-a,
12 article three of this chapter.

13 (b) Authorization to issue and transfer motor vehicle
14 registrations shall be contingent on the dealer completing an
15 application provided by the division and meeting all criteria
16 established by the division. The authority shall also be
17 contingent upon the dealer agreeing to participate fully in a
18 computerized system of electronic submission of registration,
19 titling and lien information and all fees and taxes required
20 under the provisions of this chapter, either directly to the
21 division or through an authorized service provider selected
22 and approved by the division. Any transaction conducted
23 under the provisions of this section shall be conditional
24 pending the determination by the division that the application
25 for title, registration and lien recordation is complete,
26 accurate and in accordance with the provisions of this
27 chapter.

28 (c) The authority to participate in the electronic
29 transmission of title, registration and lien information shall be
30 immediately revoked upon revocation or cancellation of a
31 dealer's license issued under the provisions of this chapter:
32 *Provided*, That the authority to issue and transfer motor
33 vehicle registrations may be revoked by the division
34 immediately and separately from any other action against the
35 dealer's license if the division determines that the terms of
36 the agreement or agreements authorizing issuance, transfer or
37 renewal of a vehicle registration or the electronic
38 transmission of information have been violated.

39 (d) A fee established by the motor vehicle dealer advisory
40 board may be charged by a motor vehicle dealer for its
41 services required under this section.

42 (e) Only motor vehicle registrations of a type specified by
43 the division may be issued, transferred or renewed by the
44 authorized dealer.

45 (f) All fees and taxes collected by an authorized dealer
46 under the provisions of this section shall be deposited in a
47 financial institution designated by the division or the service
48 provider in the manner prescribed by the division.

49 (g) The division may authorize a service provider to
50 supply an authorized dealer with the necessary forms,
51 supplies, registration plates and registration renewal decals
52 necessary to enable the authorized dealer to perform the
53 duties and functions specified in this section.

54 (1) Any service provider authorized to perform services
55 under the provisions of this section shall post a bond of the
56 applicant in the penal sum of one million dollars, in the form
57 prescribed by the commissioner, conditioned that the
58 applicant will not in the conduct of business practice any
59 fraud which, or make any fraudulent representation which,
60 shall cause a financial loss to any dealer, financial institution
61 or agency, or the State of West Virginia, with a corporate
62 surety thereon authorized to do business in this state, which
63 bond shall be effective as of the date on which the
64 authorization to provide services commences.

65 (2) The service provider is solely responsible for the
66 inventory, tracking, safety and reconciliation of all supplies,
67 registration plates, registration decals or other motor vehicle
68 credentialing items in accordance with procedures established
69 by the division and subject to audits by the division.

70 (3) The division may rescind without notice the authority
71 of a service provider to perform services when the division
72 has cause to believe that any state or federal law has been
73 violated or that the service provider is not adhering to the
74 terms and conditions of the authorization agreement.

75 (h) The service provider and the authorized dealer assume
76 full responsibility for the care, custody, control, disclosure
77 and use of any information provided by the division in order
78 to execute the duties and responsibilities required by this
79 section. Each service provider and each authorized dealer
80 agrees to ensure that the disclosure of information to it and its
81 handling of information received from the division complies
82 with all federal and state statutes and division directives
83 governing the disclosure and protection of such information.

84 (i) The commissioner may enter into agreements with
85 other states and jurisdictions granting licensed dealers
86 regulated by other states and jurisdictions the authority to
87 issue or transfer motor vehicle registrations for vehicles sold
88 by the dealer in the same manner as dealers licensed by this
89 state.

§17A-6-2a. Dealer recovery fund created.

1 (a) There is hereby created a special fund in the State
2 Treasury which is to be designated the "Dealer Recovery
3 Fund." The fund shall consist of certain moneys received
4 from persons engaged in the business of selling new or used
5 motor vehicles, new or used motorcycles, trailers,
6 semi-trailers or recreational vehicles or from grants, gifts,
7 bequests or awards arising out of the settlement or
8 adjudication of a claim. The fund is not to be treated by the
9 Auditor and Treasurer as part of the general revenue of the
10 state. The fund is to be a special revolving fund paid out
11 upon order of the Commissioner of Motor Vehicles based on
12 the recommendation of the dealer recovery fund control

13 board created in this section, solely for the purposes specified
14 in this section. The commissioner may use up to one percent
15 of funds from the dealer recovery fund for the administrative
16 expenses of operating the dealer recovery fund program.

17 (b) The dealer recovery fund control board shall consist
18 of the Commissioner of Motor Vehicles or his or her
19 designee, the Attorney General's designee representing the
20 Office of Consumer Protection and one representative
21 selected by the motor vehicle dealer's advisory board. The
22 Commissioner of Motor Vehicles or his or her designee shall
23 serve as chair and the board shall meet at least once a year
24 during the month of July, and as required by the
25 commissioner. The commissioner may propose rules for
26 promulgation in accordance with article three, chapter
27 twenty-nine-a of this code that are necessary to effectuate the
28 provisions of this section. The commissioner may employ
29 the necessary staff needed to operate the program. The board
30 may prorate the amount paid on claims when the amount of
31 valid claims submitted would exceed thirty-three percent of
32 the fund. However, claims presented by the Division of
33 Motor Vehicles for taxes and fees shall be paid in full. The
34 board may purchase insurance at a cost not to exceed one
35 percent of the fund to cover extraordinary or excess claims
36 from the fund.

37 (c) Every applicant for either an original dealer license or
38 renewal of an existing dealer license of the type enumerated
39 in subsection (a) of this section shall pay, in addition to any
40 other license fee, an annual dealer recovery fund fee of one
41 hundred fifty dollars. All dealers shall continue to maintain
42 a surety bond as required by this article and the dealer
43 recovery fund payment unless exempt by one of the
44 following requirements:

45 (1) Any dealer who, for the three years immediately
46 preceding assessment of the fees, has not had a claim paid

47 against their bond or against the dealer recovery fund, whose
48 license has not been suspended or revoked and who has not
49 been assessed any civil penalties is not required to continue
50 to keep the bond required by this article. However, no dealer
51 can submit a claim against the fund unless it has contributed
52 to the fund for at least three years.

53 (2) If the dealer recovery fund reaches or exceeds the
54 amount of three million dollars as of the first day of July of
55 any year, a dealer who meets the requirements of subdivision
56 (1) of this subsection, is exempt from payment of the annual
57 dealer recovery fund fee. However, if the fund should, as of
58 the first day of April of any year, drop below three million
59 dollars, all dealers, regardless of any previous exemption
60 shall pay the annual dealer recovery fee of one hundred fifty
61 dollars. The exemption prescribed in subdivision (1) of this
62 subsection remains in effect regardless of the status of the
63 fund.

64 (d) The dealer recovery fund control board may consider
65 payment only after any dealer surety bond required pursuant
66 to the provisions of section four of this article has been
67 exhausted.

68 (e) When the fund reaches two hundred fifty thousand
69 dollars, the board shall consider claims for payment.

70 (f) Claims against the fund are not to be made for any act
71 or omission which occurred prior to the first day of July, two
72 thousand two.

73 (g) Claims for payment shall be submitted within six
74 months of the date of sale or the date the division is made
75 aware of the claim.

76 (h) The board shall pay claims in the following order:

77 (1) Claims submitted by the Division of Motor Vehicles
78 for unpaid taxes and fees;

79 (2) Claims submitted by a retail purchaser of a vehicle
80 from a dealer covered by the fund with an undisclosed lien or
81 a retail purchaser of a vehicle from a dealer covered by the
82 fund who finds that the lien on the vehicle traded in has not
83 been satisfied by the selling dealer if the lien satisfaction was
84 a condition of the purchase agreement;

85 (3) Claims submitted by a motor vehicle dealer
86 contributing to the fund, which has purchased a vehicle or
87 vehicles from another dealer covered by the fund with an
88 undisclosed lien;

89 (4) Claims submitted by a retail purchaser of third party
90 goods or services from a dealer covered by the fund for the
91 unpaid charges when the dealer fails to pay the third party for
92 the goods or services; or

93 (5) Claims submitted by the Division of Motor Vehicles,
94 a retail purchaser or a motor vehicle dealer contributing to the
95 fund, not authorized by subdivisions (1) through (4) of this
96 subsection, but otherwise payable under the bond described
97 in section four of this article, may be considered for payment
98 by the board up to the amount of fifty thousand dollars for
99 each licensing year the West Virginia dealer that is the
100 subject of the complaint did not maintain the bond: *Provided*,
101 That the board may not consider claims submitted by or on
102 behalf of a financial institution for money owed by a dealer
103 upon a loan to a dealer or credit extended to a dealer that is
104 secured by a lien upon the inventory of the dealer, commonly
105 referred to as a floor planner.

106 (i) The maximum claim against the fund for any unpaid
107 lien of a used vehicle is the unpaid balance of the lien up to
108 the loan value of the vehicle as of the date of the sale or other

109 transaction as shown by a generally accepted motor vehicle
110 value guide. The maximum claim against the fund for any
111 new or unused vehicle is the amount of the invoice less any
112 amounts rebated or to be rebated to the dealer from the
113 manufacturer. Payment is only to be made to a secured party
114 who agrees to accept payment from the dealer recovery fund
115 and who accepts the payment in full settlement of any claims,
116 and who releases the lien and the title, if applicable, prior to
117 receiving payment. Any dealer who agrees to accept
118 payment from the dealer recovery fund shall release the title
119 prior to receiving payment.

120 (j) On payment by the board to a claimant from the fund,
121 the board shall immediately notify the licensee against whom
122 a claim was paid and request full reimbursement within thirty
123 days of notification. If a dealer fails to fully reimburse the
124 board within the specified period of time, the commissioner
125 shall immediately and without prior hearing revoke the dealer
126 license of dealer against whom the claim was paid. No
127 applicant with an unpaid claim is eligible for renewal or
128 relicensure until the full amount of the reimbursement plus
129 interest as determined by the board is paid to the fund.
130 Nothing in this section shall limit the authority of the
131 commissioner to suspend, revoke or levy civil penalties
132 against a dealer, nor shall full repayment of the amount owed
133 to the fund necessarily nullify or modify the effect of any
134 action by the commissioner.

135 (k) Nothing in this section shall limit the right for any
136 person to seek relief through civil action against any other
137 person.

138 (l) The provisions of this section do not apply to those
139 class DTR dealers in the business of selling manufactured
140 housing and covered by the state manufactured housing
141 recovery fund established by the Division of Labor pursuant
142 to a legislative rule.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

1 (a) Application for any license certificate required by
2 section three of this article shall be made on a form
3 prescribed by the commissioner. There shall be attached to
4 the application a certificate of insurance certifying that the
5 applicant has in force an insurance policy issued by an
6 insurance company authorized to do business in this state
7 insuring the applicant and any other person, as insured, using
8 any vehicle or vehicles owned by the applicant with the
9 express or implied permission of the named insured, against
10 loss from the liability imposed by law for damages arising
11 out of the ownership, operation, maintenance or use of the
12 vehicle or vehicles, subject to minimum limits, exclusive of
13 interest and costs, with respect to each vehicle, as follows:
14 Twenty thousand dollars because of bodily injury to or death
15 of one person in any one accident and, subject to the limit for
16 one person, forty thousand dollars because of bodily injury to
17 or death of two or more persons in any one accident, and ten
18 thousand dollars because of injury to or destruction of
19 property of others in any one accident.

20 (b) In the case of an application for a license certificate to
21 engage in the business of new motor vehicle dealer, used
22 motor vehicle dealer or house trailer dealer, the application
23 shall disclose, but not be limited to, the following:

24 (1) The type of business for which a license certificate is
25 sought;

26 (2) If the applicant is an individual, the full name and
27 address of the applicant and any trade name under which he
28 or she will engage in the business;

29 (3) If the applicant is a copartnership, the full name and
30 address of each partner in the copartnership, the name of the

31 copartnership, its post office address and any trade name
32 under which it will engage in the business;

33 (4) If the applicant is a corporation, its name, the state of
34 its incorporation, its post office address and the full name and
35 address of each officer and director of the corporation;

36 (5) The location of each place in this state at which the
37 applicant will engage in the business and whether the
38 business is owned or leased by the applicant;

39 (6) Whether the applicant, any partner, officer or director
40 of the business has previously engaged in the business or any
41 other business required to be licensed under the provisions of
42 this article and if so, with or for whom, at what location and
43 for what periods of time;

44 (7) Whether the applicant, any partner, officer, director
45 or employer of the business has previously applied for a
46 license certificate under the provisions of this article or a
47 similar license certificate in this or any other state, and if so,
48 whether the license certificate was issued or refused and, if
49 issued, whether it was ever suspended or revoked;

50 (8) A statement of previous general business experience
51 and the past history of the applicant; and

52 (9) Any other information that the commissioner may
53 reasonably require which may include information relating to
54 any contracts, agreements or understandings between the
55 applicant and other persons respecting the transaction of the
56 business, and any criminal record of the applicant if an
57 individual, or of each partner if a copartnership, or of each
58 officer and director, if a corporation.

59 (c) In the case of an application for a license certificate to
60 engage in the business of new motor vehicle dealer, the

61 application shall, in addition to the matters outlined in
62 subsection (b) of this section disclose:

63 (1) The make or makes of new motor vehicles which the
64 applicant will offer for sale in this state during the ensuing
65 fiscal year; and

66 (2) The exact number of new and used motor vehicles, if
67 any, sold at retail and wholesale by the applicant or his or her
68 predecessor, if any, during the preceding fiscal year, and if no
69 new and used motor vehicles were sold at retail and
70 wholesale by the applicant or his or her predecessor, if any,
71 during the preceding fiscal year, the number of new and used
72 motor vehicles the applicant reasonably expects to sell at
73 retail and wholesale during the ensuing fiscal year.

74 (d) In the case of an application for a license certificate to
75 engage in the business of used motor vehicle dealer, the
76 application shall in addition to the matters outlined in
77 subsection (b) of this section, disclose the exact number of
78 used motor vehicles, if any, sold at retail and wholesale by
79 the applicant or his or her predecessor, if any, during the
80 preceding fiscal year, and if no used motor vehicles were sold
81 at retail and wholesale by the applicant or his or her
82 predecessor, if any, during the preceding fiscal year, the
83 number of used motor vehicles the applicant reasonably
84 expects to sell at retail and wholesale during the ensuing
85 fiscal year.

86 (e) In the case of an application for a license certificate to
87 engage in the business of trailer dealer, recreational vehicle
88 dealer, motorcycle dealer, used parts dealer or wrecker/
89 dismantler/rebuilder, the application shall disclose any
90 information that the commissioner may reasonably require.

91 (f) The application shall be verified by the oath or
92 affirmation of the applicant, if an individual, or if the
93 applicant is a copartnership or corporation, by a partner or

94 officer thereof, as the case may be. Except as provided in
95 section two-a of this article, the application shall be
96 accompanied by a bond of the applicant in the penal sum of
97 twenty-five thousand dollars, in the form prescribed by the
98 commissioner, conditioned that the applicant will not in the
99 conduct of his or her business practice any fraud which, or
100 make any fraudulent representation which, shall cause a
101 financial loss to any purchaser, seller or financial institution
102 or agency, or the State of West Virginia, with a corporate
103 surety thereon authorized to do business in this state. The
104 bond shall be effective as of the date on which the license
105 certificate sought is issued.

106 (g) Upon receipt of any fully completed application,
107 together with any bond required under subsection (f) of this
108 section, the certificate of insurance as required in subsection
109 (a) of this section and the appropriate fee provided in section
110 ten of this article, the commissioner may conduct any
111 investigation he or she considers necessary to determine the
112 accuracy of any statements contained in the application and
113 the existence of any other facts which he or she considers
114 relevant in considering the application. To facilitate the
115 investigation, the commissioner may withhold issuance or
116 refusal of the license certificate for a period not to exceed
117 twenty days.

118 (h) Any application for a license certificate under the
119 provisions of this article and any information submitted with
120 the application is confidential for the use of the division. No
121 person shall divulge any information contained in any
122 application or any information submitted with the application
123 except in response to a valid subpoena or subpoena duces
124 tecum issued pursuant to law.

**§17A-6-7. When application to be made; expiration of license
certificate; renewal.**

1 (a) Every license certificate issued in accordance with the
2 provisions of this article shall, unless sooner suspended or
3 revoked, expire on the thirtieth day of June next following
4 the issuance thereof.

5 (b) A license certificate may be renewed each year in the
6 same manner, for the same fee as prescribed in section ten of
7 this article and upon the same basis as an original license
8 certificate is issued under section six of this article:
9 *Provided*, That the commissioner may not renew the license
10 of any new or used motor vehicle dealer who has sold less
11 than eighteen vehicles during the preceding year subject to
12 the following:

13 (1) This proviso does not apply to a dealer in the business
14 of selling commercial motor vehicles of a gross vehicle
15 weight of twenty-six thousand one pounds or more;

16 (2) The commissioner may approve the renewal of a
17 dealer selling less than eighteen vehicles based on a finding
18 of extenuating circumstances including, but not limited to,
19 the illness of the dealer, adverse business conditions or sales
20 credited to other types of dealer licenses held by the dealer;
21 and

22 (3) Any dealer may appeal the commissioner's refusal to
23 the Motor Vehicle Dealers Advisory Board which may
24 consider extenuating circumstances and approve the renewal.

25 All applications for the renewal of any license certificate
26 shall be filed with the commissioner at least thirty days
27 before the expiration thereof. Any application for renewal of
28 any license certificate not filed at least thirty days before the
29 expiration may not be renewed except upon payment of the
30 same fee as an original license certificate as prescribed in
31 subsection (a), section ten of this article. The commissioner
32 may allow the delinquent applicant to complete an

33 abbreviated application for renewal in lieu of an original
34 application.

§17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a
2 purchaser by a dealer to be operated on the streets and
3 highways pending receipt of the annual registration plate
4 from the division for such vehicle, the commissioner may,
5 subject to the limitations and conditions hereinafter set forth,
6 deliver temporary vehicle registration plates or markers to
7 dealers who in turn may, subject to the limitations and
8 conditions hereinafter set forth, issue the same to purchasers
9 of vehicles, but such purchasers must comply with the
10 pertinent provisions of this section.

11 (b) Application by a dealer to the commissioner for
12 temporary registration plates or markers shall be made on the
13 form and in the manner prescribed and furnished by the
14 commissioner for such purpose and shall be accompanied by
15 a fee of three dollars for each such temporary registration
16 plate or marker. The commissioner may require the fee to be
17 remitted to the division in an electronic format. No refund or
18 credit of fees paid by dealers to the commissioner for
19 temporary registration plates or markers shall be allowed,
20 except that in the event the commissioner discontinues the
21 issuance of such temporary plates or markers, dealers
22 returning temporary registration plates or markers to the
23 commissioner may petition for and be entitled to a refund or
24 a credit thereof. No temporary registration plates or markers
25 shall be delivered by the commissioner to any dealer in house
26 trailers only, and no such temporary plates or markers shall
27 be issued for or used on any house trailer for any purpose.

28 (c) Every dealer who has made application for and
29 received temporary registration plates or markers shall
30 maintain in a manner prescribed by the commissioner, a

31 record of all temporary registration plates or markers issued
32 by him or her, and a record of any other information
33 pertaining to the receipt or the issuance of temporary
34 registration plates or markers which the commissioner may
35 require. Every dealer who issues a temporary registration
36 plate or marker shall notify the division in the manner
37 prescribed by the commissioner. No temporary registration
38 plates or markers may be delivered to any dealer until such
39 dealer has fully accounted to the commissioner for the
40 temporary registration plates or markers last delivered to such
41 dealer, by showing the number issued to purchasers by such
42 dealer and any on hand.

43 (d) A dealer may not issue, assign, transfer or deliver a
44 temporary registration plate or marker to anyone other than
45 the bona fide purchaser of the vehicle to be registered; nor
46 may a dealer issue a temporary registration plate or marker to
47 anyone possessed of an annual registration plate for a vehicle
48 which has been sold or exchanged, except a dealer may issue
49 a temporary registration plate or marker to the bona fide
50 purchaser of a vehicle to be registered who possesses an
51 annual registration plate of a different class and makes
52 application to the division to exchange such annual
53 registration plate of a different class in accordance with the
54 provisions of section one, article four of this chapter; nor may
55 a dealer lend to anyone, or use on any vehicle which he or
56 she may own, a temporary registration plate or marker. It is
57 unlawful for any dealer to issue any temporary registration
58 plate or marker knowingly containing any misstatement of
59 fact, or knowingly to insert any false information upon the
60 face thereof.

61 (e) Every dealer who issues temporary registration plates
62 or markers shall affix or insert clearly and indelibly on the
63 face of each temporary registration plate or marker in the
64 manner prescribed by the commissioner, the date of issuance
65 and expiration thereof, and the make and motor or serial
66 number of the vehicle for which issued.

67 (f) If the commissioner finds that the provisions of this
68 section or his or her directions are not being complied with
69 by a dealer, he or she may suspend the right of such dealer to
70 issue temporary registration plates or markers.

71 (g) Every person to whom a temporary registration plate
72 or marker has been issued shall permanently destroy such
73 temporary registration plate or marker immediately upon
74 receiving the annual registration plate for such vehicle from
75 the division: *Provided*, That if the annual registration plate
76 is not received within sixty days of the issuance of the
77 temporary registration plate or marker, the owner shall,
78 notwithstanding the fact that the annual registration plate has
79 not been received, immediately and permanently destroy the
80 temporary registration plate or marker: *Provided, however*,
81 That not more than one temporary registration plate or
82 marker shall be issued to the same bona fide purchaser for the
83 same vehicle.

84 (h) A temporary registration plate or marker shall expire
85 and become void upon the receipt of the annual registration
86 plate from the division or upon the rescission of the contract
87 to purchase the vehicle in question, or upon the expiration of
88 sixty days from the date of issuance, depending upon
89 whichever event shall first occur.

90 (i) For the purpose of this section, the term "dealer"
91 includes a wrecker/dismantler/rebuilder and in the context of
92 issuing temporary registration plates, any other business
93 licensed by the division in accordance with the provisions of
94 this chapter and authorized to issue temporary registration
95 plates or markers.

96 (j) The commissioner may require participation in an
97 electronic temporary plate issuance system by all dealers as
98 a precondition for authority for a dealer to issue temporary
99 license plates or markers.

§17A-6-18a. Motor Vehicle Dealers Advisory Board.

1 (a) There is continued a Motor Vehicle Dealers Advisory
2 Board to assist and to advise the commissioner on the
3 administration of laws regulating the motor vehicle industry;
4 to work with the commissioner in developing new laws, rules
5 or policies regarding the motor vehicle industry; to advise the
6 commissioner on setting documentary charges or similar
7 charges motor vehicle dealers may charge consumers for
8 documentary services in relation to securing a title, which
9 such charges the commissioner is hereby granted authority to
10 set; and to give the commissioner any further advice and
11 assistance as he or she may, from time to time, require.

12 The board shall consist of nine members and the
13 Commissioner of Motor Vehicles, or his or her
14 representative, who shall be an ex officio member. Two
15 members shall represent new motor vehicle dealers, with one
16 of these two members representing dealers that sell less than
17 one hundred new vehicles per year; one member shall
18 represent used motor vehicle dealers; one member shall
19 represent wrecker/dismantler/rebuilders; one member shall
20 represent automobile auctions; one member shall represent
21 recreational dealers; one member shall represent the West
22 Virginia Attorney General's office; and two members shall
23 represent consumers. All of the representatives, except the
24 Attorney General representative who shall be designated by
25 the Attorney General, shall be appointed by the Governor
26 with the advice and consent of the Senate, with no more than
27 five representatives being from the same political party.

28 The terms of the board members shall be for three years.
29 The attorney general representative shall serve continuously.

30 The board shall meet at least four times annually and at
31 the call of the commissioner.

32 (b) The commissioner shall consult with the board before
33 he or she takes any disciplinary action against a dealer, an
34 automobile auction or a license service to revoke or suspend
35 a license, place the licensee on probation or levy a civil
36 penalty, unless the commissioner determines that the
37 consultation would endanger a criminal investigation.

38 (c) The commissioner may consult with the board by
39 mail, by facsimile, by telephone or at a meeting of the board,
40 but the commissioner is not bound by the recommendations
41 of the board. The commissioner shall give members seven
42 days from the date of a mailing or other notification to
43 respond to proposed actions, except in those instances when
44 the commissioner determines that the delay in acting creates
45 a serious danger to the public's health or safety or would
46 unduly compromise the effectiveness of the action.

47 (d) No action taken by the commissioner is subject to
48 challenge or rendered invalid on account of his or her failure
49 to consult with the board.

50 (e) The appointed members shall serve without
51 compensation, however, members are entitled to
52 reimbursement of travel and other necessary expenses
53 actually incurred while engaged in legitimate board activities
54 in accordance with the guidelines of the Travel Management
55 Office of the Department of Administration or its successor
56 agency.

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-2. Definitions.

1 The following words as used in this article, unless the
2 context otherwise requires, have the following meanings:

3 (1) "Applicant" means any person making application for
4 an original or renewal of a salesperson license;

5 (2) "Dealer" means any motor vehicle or auction business
6 regulated under the provisions of article six or six-c of this
7 chapter;

8 (3) "Licensee" means any person holding a license issued
9 under the provisions of this article;

10 (4) "Motor vehicle salesperson" or "salesperson" means
11 any person employed by a dealer to sell, buy, display and
12 offer for sale or deal in motor vehicles, recreational vehicles
13 or trailers, as those terms are defined in section one of article
14 one of this chapter, for a commission or other valuable
15 consideration, but does not mean any public officer
16 performing his or her official duties or the dealer licensee. A
17 person employed by a dealer as a finance and insurance
18 representative is for the purposes of this article a salesperson.
19 For the purposes of this article, the term "motor vehicle
20 salesperson" does not apply to persons employed by a dealer
21 in the business of selling commercial motor vehicles with a
22 gross vehicle weight of twenty-six thousand one pounds or
23 more, employees of financial institutions or to businesses
24 licensed as auctions.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

1 (a) In addition to the sales finance charge or loan finance
2 charge permitted by this chapter, a creditor may contract for

3 and receive the following additional charges in connection
4 with a consumer credit sale or a consumer loan:

5 (1) Official fees and taxes;

6 (2) Charges for insurance as described in subsection (b)
7 of this section: *Provided*, That nothing contained in this
8 section with respect to insurance in any way limits the power
9 and jurisdiction of the Insurance Commissioner of this state
10 in the premises;

11 (3) Annual charges, payable in advance, for the privilege
12 of using a lender credit card or similar arrangement which
13 entitles the user to purchase goods or services from at least
14 one hundred persons not related to the issuer of the lender
15 credit card or similar arrangement, under an arrangement
16 pursuant to which the debts resulting from the purchases are
17 payable to the issuer;

18 (4) Charges for other benefits, including insurance,
19 conferred on the consumer, if the benefits are of value to him
20 or her and if the charges are reasonable in relation to the
21 benefits, are of a type which is not for credit and are excluded
22 as permissible additional charges from the sales finance
23 charge or loan finance charge by rule adopted by the
24 commissioner: *Provided*, That as to insurance, the policy as
25 distinguished from a certificate of coverage thereunder may
26 only be issued by an individual licensed under the laws of
27 this state to sell the insurance and the determination of
28 whether the charges therefor are reasonable in relation to the
29 benefits shall be determined by the Insurance Commissioner
30 of this state;

31 (5) Reasonable closing costs with respect to a debt
32 secured by an interest in land; and

33 (6) Documentary charge or any other similar charge for
34 documentary services in relation to securing a title, so long
35 as said charge is applied equally to cash customers and credit
36 customers and there is a reasonable relationship between said
37 charge and the benefit conferred on the customer.

38 (b) A creditor may take, obtain or provide reasonable
39 insurance on the life and earning capacity of any consumer
40 obligated on the consumer credit sale or consumer loan,
41 reasonable insurance on any real or personal property offered
42 as security subject to the provisions of this subsection and
43 section one hundred nine-a of this article and vendor's or
44 creditor's single interest insurance with respect to which the
45 insurer has no right of subrogation. Only one policy of life
46 insurance and/or one policy of health and accident insurance
47 and/or one policy of accident insurance and/or one policy of
48 loss of income insurance on any one consumer may be in
49 force with respect to any one contract or agreement at any
50 one time, but one policy may cover both a consumer and his
51 or her spouse:

52 (1) The amount, terms and conditions of property
53 insurance shall have a reasonable relation to the existing
54 hazards or risk of loss, damage or destruction and be
55 reasonable in relation to the character and value of the
56 property insured or to be insured; and the term of the
57 insurance shall be reasonable in relation to the terms of
58 credit: *Provided*, That nothing may prohibit the consumer
59 from obtaining, at his or her option, greater coverages for
60 longer periods of time if he or she so desires;

61 (2) Life insurance shall be in an initial amount not to
62 exceed the total amount repayable under the consumer credit
63 agreement, and where a consumer credit sale or consumer
64 loan is repayable in installments, such insurance may at no
65 time exceed the scheduled or actual amount of unpaid
66 indebtedness, whichever is greater. Life insurance authorized

67 by this subdivision shall provide that the benefits be paid to
68 the creditor to reduce or extinguish the unpaid indebtedness:
69 *Provided*, That if a separate charge is made for the insurance
70 and the amount of insurance exceeds the unpaid
71 indebtedness, where not prohibited, then the excess is
72 payable to the estate of the consumer. The initial term of the
73 life insurance in connection with a consumer credit sale,
74 other than a sale pursuant to a revolving charge account, or
75 in connection with a consumer loan, other than a loan
76 pursuant to a revolving loan account, may not exceed the
77 scheduled term of the consumer credit agreement by more
78 than fifteen days. The aggregate amount of periodic benefits
79 payable by credit accident and health insurance in the event
80 of disability, as defined in the policy, and loss of income
81 insurance in the event of involuntary loss of employment, as
82 defined in the policy, may not exceed the unpaid amount of
83 such indebtedness; periodic benefits payable in connection
84 with a consumer credit sale pursuant to a revolving charge
85 account or of a consumer loan pursuant to a revolving loan
86 account may be based upon the authorized credit limit;

87 (3) When the insurance is obtained or provided by or
88 through a creditor, the creditor may collect from the
89 consumer or include as part of the cash price of a consumer
90 credit sale or as part of the principal of a consumer loan or
91 deduct from the proceeds of any consumer loan the premium
92 or, in the case of group insurance, the identifiable charge.
93 The premium or identifiable charge for the insurance required
94 or obtained by a creditor may equal, but may not exceed the
95 premium rate filed by the insurer with the insurance
96 commissioner. In any case when the creditor collects the
97 entire premium for such insurance in advance, the premium
98 shall be remitted by the creditor to the insurer or the
99 insurance agent, as specified by the insurer, within ten days
100 from or after the end of the month in which the collection
101 was made;

102 (4) With respect to insurance against loss of or damage to
103 property or against liability, the creditor shall furnish a clear
104 and specific statement in writing to the debtor setting forth
105 the cost of the insurance if obtained from or through the
106 creditor and stating that the debtor may choose the person
107 through whom the insurance is to be obtained;

108 (5) With respect to consumer credit insurance providing
109 life, accident, health or loss of income coverage, no creditor
110 may require a consumer to purchase the insurance or to
111 purchase the insurance from the creditor or any particular
112 agent, broker or insurance company as a condition precedent
113 to extending credit to or on behalf of such consumer;

114 (6) When a consumer credit sale or consumer loan,
115 refinancing or consolidation is paid in full, the creditor
116 receiving the payment shall inform the debtor of the
117 cancellation of any consumer credit insurance providing life,
118 accident, health or loss of income coverage and advise the
119 debtor of the application of any unearned premiums to the
120 loan balance. Notices required by this subdivision shall be
121 made in the following manner:

122 (A) If the insurance was not sold or provided by the
123 creditor, the creditor receiving the payment shall notify the
124 debtor that he or she may have the right to receive a refund
125 of unearned premiums from any other seller or provider of
126 the insurance and advise the debtor of his or her obligation to
127 notify any other insurer of the payment of the loan balance
128 and the cancellation of the consumer credit insurance and
129 request a refund or credit of unearned premiums, if
130 applicable. Such notice shall be sent on a form as prescribed
131 by the Insurance Commissioner as provided in chapter
132 twenty-nine-a of this code and shall contain the name and
133 address of the seller and the insurer; or

134 (B) If the creditor was the seller or provider of the
135 consumer credit insurance, the creditor shall:

136 (i) Notify the insurer or shall cause the insurer to be
137 notified of the cancellation of such insurance; and

138 (ii) Notify the debtor of the cancellation of the insurance
139 and of the application of any unearned premiums to the loan
140 balance, which notice may be on a form consistent with the
141 general course of business of the creditor;

142 (7) Upon receipt by the insurer of notification of the
143 cancellation of consumer credit insurance, the insurer shall
144 cancel the insurance effective no later than thirty days from
145 the date of receipt of the notice. Within forty-five days
146 following the date of notification of cancellation of the
147 insurance, the insurer shall pay any refund of unearned
148 premiums to the debtor-insurer or such other person as
149 directed by the debtor-insurer; and

150 (8) An insurer, seller or creditor who fails to refund any
151 unused insurance premium or provide the proper notification
152 of payoff is liable for civil damages up to three times the
153 amount of the unused premium as well as other remedies as
154 provided by section one hundred nine, article seven of this
155 chapter.

156 (c) The Insurance Commissioner of this state shall
157 promulgate legislative rules in accordance with the
158 provisions of chapter twenty-nine-a of this code to implement
159 the provisions of this article relating to insurance and the
160 authority of the Insurance Commissioner to promulgate the
161 rules is exclusive notwithstanding any other provisions of
162 this code to the contrary.

CHAPTER 149

**(Com. Sub. for H.B. 2881 - By Delegates Walters, Boggs,
White and Hrutkay)**

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to extending the weekend time period for the operation of antique motor vehicles and antique motorcycles for recreational purposes.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration and use of classic motor vehicles and classic motorcycles.

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is two dollars.
3 "Antique motor vehicle" means any motor vehicle which is
4 more than twenty-five years old and is owned solely as a
5 collector's item. "Antique motorcycle" means any motorcycle
6 which is more than twenty-five years old and is owned solely
7 as a collector's item.

8 "Classic motor vehicle" means a motor vehicle which is
9 more than twenty-five years old and is registered pursuant to

10 section three of this article and is used for general
11 transportation.

12 "Classic motorcycle" means a motorcycle which is more
13 than twenty-five years old and is registered pursuant to
14 section three of this article and is used for general
15 transportation.

16 (b) Except as otherwise provided in this section, antique
17 motor vehicles or motorcycles may not be used for general
18 transportation but may only be used for:

19 (1) Participation in club activities, exhibits, tours, parades
20 and similar events;

21 (2) The purpose of testing their operation, obtaining
22 repairs or maintenance and transportation to and from events
23 as described in subdivision (1); and

24 (3) Recreational purposes over weekends, beginning on
25 Friday at twelve o'clock noon, and ending on the following
26 Monday at twelve o'clock noon, and on holidays: *Provided,*
27 That a classic motor vehicle or a classic motorcycle as
28 defined in this section may be registered under the applicable
29 class at the applicable registration fee set forth in section
30 three of this article and may be used for general
31 transportation.

32 (c) A West Virginia motor vehicle or motorcycle
33 displaying license plates of the same year of issue as the
34 model year of the antique motor vehicle or motorcycle, as
35 authorized in this section, may be used for general
36 transportation purposes if the following conditions are met:

37 (1) The license plate's physical condition has been
38 inspected and approved by the Division of Motor Vehicles;

39 (2) The license plate is registered to the specific motor
40 vehicle or motorcycle by the Division of Motor Vehicles;

41 (3) The owner of the motor vehicle or motorcycle annually
42 registers the motor vehicle or motorcycle and pays an annual
43 registration fee for the motor vehicle or motorcycle equal to that
44 charged to obtain regular state license plates; and

45 (4) The motor vehicle or motorcycle passes an annual
46 safety inspection; and

47 (5) The motor vehicle or motorcycle displays a sticker
48 attached to the license plate, issued by the division, indicating
49 that the motor vehicle or motorcycle may be used for general
50 transportation.

51 (d) If more than one request is made for license plates
52 having the same number, the division shall accept only the
53 first application.

54 (e) The commissioner may promulgate rules in
55 accordance with the provisions of chapter twenty-nine-a of
56 this code as may be necessary or convenient for the carrying
57 out of the provisions of this section.



CHAPTER 150

**(Com. Sub. for H.B. 4515 - By Delegates Webster, Long, Mahan,
Brown, Hrutkay, Staggers, Varner and Guthrie)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §17B-3-13,
relating to reports by health care providers of persons
incompetent to drive an automobile.

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 §17B-3-13, to read as follows:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-13. Reports by health care providers.

1 (a) Health care providers licensed and authorized
2 pursuant to chapter thirty of the code to diagnose or treat
3 diseases, disorders, disabilities or conditions, may notify the
4 division in writing of the full name, date of birth and address
5 of every person fifteen years of age or older who suffers from
6 a physical or mental disease, disorder, disability, condition or
7 symptoms that prevents the person from safely operating
8 motor vehicle, and which is either:

9 (1) Uncontrollable (either through medication, therapy,
10 or surgery; or by driving device or technique);

11 (2) Controllable, but the patient does not comply with the
12 recommendations of the health care provider for treatment or
13 restricted driving; or

14 (3) Undiagnosed but the extent of driver impairment is
15 potentially significant based on the patient's symptoms.

16 (b) Reports, recommendations or opinions, findings or
17 advice received or made by the division for the purpose of
18 determining whether a person is qualified to be licensed to
19 drive are for the confidential use of the division and exempt
20 from provisions of article one, chapter twenty-nine-b of this
21 code and may only be admitted in proceedings to either
22 suspend, revoke or impose limitations on the use of a driver's
23 license pursuant to section six, subsection (a)(5), article three,
24 chapter seventeen-b of this code or section seven, article

25 three, chapter seventeen-b of this code, or to reinstate the
26 driver's license.

27 (c) Reports, recommendations, opinions, findings or
28 advice received or made by the division for the purpose of
29 determining whether a person is qualified to be licensed to
30 drive may not be used in any proceedings to establish or prove
31 competencies other than qualifications to operate a vehicle.

32 (d) A health care provider who makes a notification
33 pursuant to subsection (a) shall be immune from any civil,
34 administrative or criminal liability that otherwise might be
35 incurred or imposed because of such notification if the health
36 care provider has:

37 (1) Documented in the patient's record the disease,
38 disorder, disability, condition or symptoms which may impair
39 the patient's ability to drive a motor vehicle to a degree that
40 precludes the safe operation of a motor vehicle;

41 (2) Informed the patient that their disease, disorder,
42 disability, condition or symptoms may impair the patient's
43 ability to drive a motor vehicle to a degree that precludes the
44 safe operation of a motor vehicle;

45 (3) Advised the patient that he or she should not operate
46 a motor vehicle; and

47 (4) Disclosed to the patient that the health care provider
48 may notify the Commissioner of the patient's condition and
49 of the patient's inability to safely operate a motor vehicle.

50 (e) Compliance with or failure to comply with the
51 requirements of this section does not constitute negligence,
52 nor may compliance or noncompliance with the requirements
53 of this section be admissible as evidence of negligence in any
54 civil or criminal action.

CHAPTER 151

(Com. Sub. for H.B. 4099 - By Delegates Perry, Ellem, Morgan, Stemple, Boggs, Webster, White and Palumbo)

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to allowing certain vehicles designated for emergency response or emergency management to use red flashing warning lights.

Be it enacted by the Legislature of West Virginia:

That §17C-15-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor
2 vehicle other than head lamps, spot lamps, auxiliary lamps or
3 flashing front-direction signals which projects a beam of light
4 of an intensity greater than three hundred candlepower shall
5 be so directed that no part of the beam will strike the level of
6 the roadway on which the vehicle stands at a distance of
7 more than seventy-five feet from the vehicle.

8 (b) No person may drive or move any vehicle or
9 equipment upon any highway with any lamp or device on the
10 vehicle displaying other than a white or amber light visible

11 from directly in front of the center of the vehicle except as
12 authorized by subsection (d) of this section.

13 (c) Except as authorized in subsections (d) and (f) of this
14 section and authorized in section nineteen of this article,
15 flashing lights are prohibited on motor vehicles: *Provided,*
16 That any vehicle as a means for indicating right or left turn or
17 any vehicle as a means of indicating the same is disabled or
18 otherwise stopped for an emergency may have blinking or
19 flashing lights.

20 (d) Notwithstanding any other provisions of this chapter,
21 the following colors of flashing warning lights are restricted
22 for the use of the type of vehicle designated:

23 (1) Blue flashing warning lights are restricted to police
24 vehicles. Authorization for police vehicles shall be
25 designated by the chief administrative official of each police
26 department.

27 (2) Except for standard vehicle equipment authorized by
28 section nineteen of this article, red flashing warning lights are
29 restricted to the following:

30 (A) Ambulances;

31 (B) Fire-fighting vehicles;

32 (C) Hazardous material response vehicles;

33 (D) Industrial fire brigade vehicles;

34 (E) Rescue squad vehicles not operating out of a fire
35 department;

36 (F) School buses;

37 (G) Class A vehicles, as defined by section one, article
38 ten, chapter seventeen-a of this code, of those firefighters
39 who are authorized by their fire chiefs to have the lights;

40 (H) Class A vehicles of members of duly chartered rescue
41 squads not operating out of a fire department;

42 (I) Class A vehicles of members of ambulance services
43 or duly chartered rescue squads who are authorized by their
44 respective chiefs to have the lights;

45 (J) Class A vehicles of out-of-state residents who are
46 active members of West Virginia fire departments,
47 ambulance services or duly chartered rescue squads who are
48 authorized by their respective chiefs to have the lights;

49 (K) West Virginia Department of Agriculture emergency
50 response vehicles;

51 (L) Vehicles designated by the Secretary of the
52 Department of Military Affairs and Public Safety for
53 emergency response or emergency management by the
54 Division of Corrections, Regional Jail and Correctional
55 Facility Authority, Division of Juvenile Services and
56 Division of Homeland Security and Emergency Management;
57 and

58 (M) Class A vehicles of emergency response or
59 emergency management personnel as designated by the
60 Secretary of the Department of Military Affairs and Public
61 Safety and the county commission of the county of residence.

62 Red flashing warning lights attached to a Class A vehicle
63 may be operated only when responding to or engaged in
64 handling an emergency requiring the attention of the
65 firefighters, members of the ambulance services or chartered
66 rescue squads.

67 (3) The use of red flashing warning lights is authorized as
68 follows:

69 (A) Authorization for all ambulances shall be designated
70 by the Department of Health and Human Resources and the
71 sheriff of the county of residence.

72 (B) Authorization for all fire department vehicles shall be
73 designated by the fire chief and the State Fire Marshal's
74 office.

75 (C) Authorization for all hazardous material response
76 vehicles and industrial fire brigades shall be designated by
77 the chief of the fire department and the State Fire Marshal's
78 office.

79 (D) Authorization for all rescue squad vehicles not
80 operating out of a fire department shall be designated by the
81 squad chief, the sheriff of the county of residence and the
82 Department of Health and Human Resources.

83 (E) Authorization for school buses shall be designated as
84 set out in section twelve, article fourteen of this chapter.

85 (F) Authorization for firefighters to operate Class A
86 vehicles shall be designated by their fire chiefs and the State
87 Fire Marshal's office.

88 (G) Authorization for members of ambulance services or
89 any other emergency medical service personnel to operate
90 Class A vehicles shall be designated by their chief official,
91 the Department of Health and Human Resources and the
92 sheriff of the county of residence.

93 (H) Authorization for members of duly chartered rescue
94 squads not operating out of a fire department to operate Class
95 A vehicles shall be designated by their squad chiefs, the
96 sheriff of the county of residence and the Department of
97 Health and Human Resources.

98 (I) Authorization for out-of-state residents operating
99 Class A vehicles who are active members of a West Virginia

100 fire department, ambulance services or duly chartered rescue
101 squads shall be designated by their respective chiefs.

102 (J) Authorization for West Virginia Department of
103 Agriculture emergency response vehicles shall be designated
104 by the Commissioner of the Department of Agriculture.

105 (K) Authorization for vehicles for emergency response or
106 emergency management by the Division of Corrections,
107 Regional Jail and Correctional Facility Authority, Division of
108 Juvenile Services and Division of Homeland Security and
109 Emergency Management shall be designated by the Secretary
110 of the Department of Military Affairs and Public Safety.

111 (L) Authorization for Class A vehicles of emergency
112 response or emergency management personnel as designated
113 by the Secretary of the Department of Military Affairs and
114 Public Safety and the county commission of the county of
115 residence.

116 (4) Yellow or amber flashing warning lights are restricted
117 to the following:

118 (A) All other emergency vehicles, including tow trucks
119 and wreckers, authorized by this chapter and by section
120 twenty-seven of this article;

121 (B) Postal service vehicles and rural mail carriers, as
122 authorized in section nineteen of this article;

123 (C) Rural newspaper delivery vehicles;

124 (D) Flag car services;

125 (E) Vehicles providing road service to disabled vehicles;

126 (F) Service vehicles of a public service corporation;

127 (G) Snow removal equipment;

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128 (H) School buses; and

129 (I) Automotive fire apparatus owned by a municipality or
130 other political subdivision, by a volunteer or part-volunteer
131 fire company or department or by an industrial fire brigade.

132 (5) The use of yellow or amber flashing warning lights
133 shall be authorized as follows:

134 (A) Authorization for tow trucks, wreckers, rural
135 newspaper delivery vehicles, flag car services, vehicles
136 providing road service to disabled vehicles, service vehicles
137 of a public service corporation and postal service vehicles
138 shall be designated by the sheriff of the county of residence.

139 (B) Authorization for snow removal equipment shall be
140 designated by the Commissioner of the Division of
141 Highways.

142 (C) Authorization for school buses shall be designated as
143 set out in section twelve, article fourteen of this chapter.

144 (D) Authorization for automotive fire apparatus shall be
145 designated by the fire chief in conformity with the NFPA
146 1901 Standard for Automotive Fire Apparatus as published
147 by the National Fire Protection Association (NFPA) on the
148 eighteenth day of July, two thousand three, and adopted by
149 the State Fire Commission by legislative rule (87 CSR 1, *et*
150 *seq.*), except as follows:

151 (i) With the approval of the State Fire Marshal, used
152 automotive fire apparatus may be conformed to the NFPA
153 standard in effect on the date of its manufacture or conformed
154 to a later NFPA standard; and

155 (ii) Automotive fire apparatus may be equipped with
156 blinking or flashing headlamps.

157 (e) Notwithstanding the foregoing provisions of this
158 section, any vehicle belonging to a county board of
159 education, an organization receiving funding from the state
160 or Federal Transit Administration for the purpose of
161 providing general public transportation or hauling solid waste
162 may be equipped with a white flashing strobotron warning
163 light. This strobe light may be installed on the roof of a
164 school bus, a public transportation vehicle or a vehicle
165 hauling solid waste not to exceed one-third the body length
166 forward from the rear of the roof edge. The light shall have
167 a single clear lens emitting light three hundred sixty degrees
168 around its vertical axis and may not extend above the roof
169 more than six and one-half inches. A manual switch and a
170 pilot light must be included to indicate the light is in
171 operation.

172 (f) It is unlawful for flashing warning lights of an
173 unauthorized color to be installed or used on a vehicle other
174 than as specified in this section, except that a police vehicle
175 may be equipped with either or both blue or red warning
176 lights.



CHAPTER 152

**(Com. Sub. for H.B. 4389 - By Delegates Webster, Stemple,
Hrutkay, Fleischauer, Lane, Long, Shook, Longstreth,
Miley and Ellem)**

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact § 17C-19-3 of the Code of West Virginia, 1931, as amended, relating to removing the requirement that resident violators of certain traffic laws be

required to sign citations or notices to appear in court as written promises to appear in court as a condition of release from custody.

Be it enacted by the Legislature of West Virginia:

That §17C-19-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL COURTS.

§17C-19-3. When person arrested must be taken immediately before a magistrate or court.

1 (a) Whenever any person is arrested for any violation of
2 this chapter punishable as a misdemeanor, the arrested person
3 shall be immediately taken before a magistrate or court
4 within the county in which the offense charged is alleged to
5 have been committed and who has jurisdiction of the offense
6 and is nearest or most accessible with reference to the place
7 where the arrest is made, in any of the following cases:

8 (1) When a person arrested demands an immediate
9 appearance before a magistrate or court;

10 (2) When the person is arrested upon a charge of
11 negligent homicide;

12 (3) When the person is arrested upon a charge of driving
13 while under the influence of alcohol, or under the influence
14 of any controlled substance, or under the influence of any
15 other drug, or under the combined influence of alcohol and
16 any controlled substance or any other drug;

17 (4) When the person is arrested upon a charge of failure
18 to stop in the event of an accident causing death, personal
19 injury or damage to property;

20 (5) When the person is arrested upon a charge of
21 violating section fourteen, article seventeen of this chapter
22 relating to weight violations, except as otherwise provided in
23 that section;

24 (6) When the person arrested is a resident of a state that
25 has not entered into a nonresident violator compact with this
26 state;

27 (7) In any other event when the person arrested refuses to
28 accept the written notice to appear in court as his or her
29 promise to appear in court or to comply with the terms of the
30 written notice to appear in court as provided in section four
31 of this article.

32 (b) When the person arrested is a resident of a state that
33 has entered into a nonresident violator compact with this
34 state, the arresting officer shall issue the person a written
35 notice as provided for in section four of this article and may
36 not take the person immediately before a magistrate or court,
37 except under the terms of the compact or under the
38 circumstances set forth in subsection (a) of this section.

CHAPTER 153

**(Com. Sub. for H.B. 4156 - By Delegates Morgan, Craig,
Palumbo, Klempa, Hutchins and Higgins)**

[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to place a lien on property in an amount that

reflects the costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building on the property.

Be it enacted by the Legislature of West Virginia:

That §8-12-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

1 (a) Plenary power and authority are hereby conferred
2 upon every municipality to adopt ordinances regulating the
3 repair, alteration or improvement, or the vacating and closing
4 or removal or demolition, or any combination thereof, of any
5 dwellings or other buildings unfit for human habitation due
6 to dilapidation, defects increasing the hazard of fire,
7 accidents or other calamities, lack of ventilation, light or
8 sanitary facilities or any other conditions prevailing in any
9 dwelling or building, whether used for human habitation or
10 not, which would cause such dwellings or other buildings to
11 be unsafe, unsanitary, dangerous or detrimental to the public
12 safety or welfare.

13 (b) The governing body in formally adopting the
14 ordinances shall designate the enforcement agency, which
15 shall consist of the mayor, the municipal engineer or building
16 inspector and one member at large, to be selected by and to

17 serve at the will and pleasure of the mayor. The ranking
18 health officer and fire chief shall serve as ex officio members
19 of the enforcement agency.

20 (c) Any ordinance adopted pursuant to the provisions of
21 this section must provide fair and equitable rules of
22 procedure and any other standards deemed necessary to guide
23 the enforcement agency, or its agents, in the investigation of
24 dwelling or building conditions, and in conducting hearings:
25 *Provided*, That any entrance upon premises for the purpose
26 of making examinations is made in a manner as to cause the
27 least possible inconvenience to the persons in possession.

28 (d) The governing body of every municipality has
29 plenary power and authority to adopt an ordinance requiring
30 the owner or owners of any dwelling or building under
31 determination of the State Fire Marshal, as provided in
32 section twelve, article three, chapter twenty-nine of this code,
33 or under order of the enforcement agency of the municipality,
34 to pay for the costs of repairing, altering or improving, or of
35 vacating and closing, removing or demolishing any dwelling
36 or building.

37 (e) Every municipality:

38 (1) May file a lien against the real property in question
39 for an amount that reflects all costs incurred by the
40 municipality for repairing, altering or improving, or of
41 vacating and closing, removing or demolishing any dwelling
42 or building; and

43 (2) May institute a civil action in a court of competent
44 jurisdiction against the landowner or other responsible party
45 for all costs incurred by the municipality with respect to the
46 property and for reasonable attorney fees and court costs
47 incurred in the prosecution of the action.

48 (f) Not less than ten days prior to instituting a civil action
49 as provided for in this section, the governing body of the
50 municipality shall send notice to the landowner by certified
51 mail, return receipt requested, advising the landowner of the
52 governing body's intention to institute such action.

53 (g) The notice shall be sent to the most recent address of
54 the landowner of record in the office of the assessor of the
55 county where the subject property is located. If, for any
56 reason, such certified mail is returned without evidence of
57 proper receipt thereof, then in such event, the governing body
58 shall cause a Class III-0 legal advertisement to be published
59 in a newspaper of general circulation in the county wherein
60 the subject property is located and post notice on the front
61 door or other conspicuous location on the subject property.

62 (h) If any landowner desires to contest any demand
63 brought forth pursuant to this section, the landowner may
64 seek relief in a court of competent jurisdiction.

65 (i) All orders issued by the enforcement agency shall be
66 served in accordance with the law of this state concerning the
67 service of process in civil actions, and, be posted in a
68 conspicuous place on the premises affected by the complaint
69 or order: *Provided*, That no ordinance may be adopted
70 without providing for the right to apply to the circuit court for
71 a temporary injunction restraining the enforcement agency
72 pending final disposition of the cause.

73 (j) In the event such application is made, a hearing
74 thereon shall be had within twenty days, or as soon thereafter
75 as possible, and the court shall enter such final order or
76 decree as the law and justice may require.

CHAPTER 154

(Com. Sub. for H.B. 4386 - By Delegates DeLong and Morgan)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-16a, relating to uninhabitable property in municipalities; authorizing municipalities to establish property registration and assess fees by ordinance; procedures and requirements for the property registration and fees; establishing appeal process; and process for delinquent fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-12-16a, to read as follows:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES AND ALLIED RELATIONS OF
MUNICIPALITIES, GOVERNING
BODIES AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST
MUNICIPALITIES.**

§8-12-16a. Registration of uninhabitable property.

1 (a) The governing body of a municipality may, by
2 ordinance, establish a property registration for any real

3 property improved by a structure that is uninhabitable and
4 violates the applicable building code adopted by the
5 municipality. An owner of real property subject to the
6 registration shall be assessed a fee as provided by the
7 ordinance.

8 (b) The mayor of the municipality shall appoint a code
9 enforcement officer to investigate and determine whether real
10 property violates provisions of the applicable building code
11 of the municipality.

12 (c) After inspecting the property, if the officer determines
13 the property is uninhabitable and violates the applicable
14 building code, then:

15 (1) The officer shall post a written notice on the property
16 which shall include:

17 (A) An explanation of the violation(s);

18 (B) A description of the registration;

19 (C) The date the fee will be assessed;

20 (D) An explanation of how to be removed from the
21 registration;

22 (E) An explanation of the appeals process; and

23 (F) A statement that if the fee is not paid, then the
24 property is subject to forfeiture; and

25 (2) Within five business days of the inspection and the
26 posting of the property, the officer shall, by certified mail,
27 send a copy of the notice that was posted to the owner(s) of
28 the property at the last known address according to the
29 county property tax records.

30 (d) Within forty-five days of receipt of the notification by
31 the owner(s), the property owner may:

32 (1) Make and complete any repairs to the property that
33 violate the applicable building code; or

34 (2) Provide written information to the officer showing
35 that repairs are forthcoming in a reasonable period of time.

36 (e) After the repairs are made, the owner may request a
37 reinspection of the property to ensure compliance with the
38 applicable building code. If the officer finds the violations
39 are fixed, the owner is not subject to the registration and no
40 fee will be incurred.

41 (f) The officer may reinspect the property at any time to
42 determine where in the process the repairs fall.

43 (g) Within ninety days of receipt of the notification by the
44 owner(s), the property owner has the right to appeal the
45 decision of the officer to the enforcement agency, created in
46 section sixteen, article twelve of this chapter.

47 (h) If an appeal is not filed within ninety days, the
48 property is registered and the fee is assessed to the owner(s)
49 on the date specified in the notice. The notice of the fee shall
50 be recorded in the office of the clerk of the county
51 commission of the county where the property is located and
52 if different, in the office of the clerk of the county
53 commission of the county where the property is assessed for
54 real property taxes.

55 (i) If the enforcement agency affirms the registration and
56 assessment of the registration fee, the property owner has the
57 right to appeal the decision of the enforcement agency to the
58 circuit court within thirty days of the decision. If the decision

59 is not appealed in a timely manner to the circuit court, then
60 the property is registered and the fee is assessed on the date
61 specified in the notice. The notice of the fee shall be
62 recorded in the office of the clerk of the county commission
63 of the county where the property is located and if different,
64 in the office of the clerk of the county commission of the
65 county where the property is assessed for real property taxes.

66 (j) A fee assessed under this section shall be recorded in
67 the same manner as a lien is recorded in the office of the
68 clerk of the county commission of the county.

69 (k) If the fee is paid, then the municipality shall record a
70 release of the fee in the office of the clerk of the county
71 commission of the county where the property is located and
72 if different, in the office of the clerk of the county
73 commission of the county where the property is assessed for
74 real property taxes.

75 (l) If an owner fails to pay the fee, then the officer shall
76 annually post the written notice on the property and send the
77 written notice to the owner(s) by certified mail.

78 (m) If a registration fee remains delinquent for two years
79 from the date it was placed on record in the clerk of the
80 county commission in which the property is located and
81 assessed, the municipality may take action to receive the
82 subject property by means of forfeiture. Should the
83 municipality take the steps necessary to receive the subject
84 property, the municipality then becomes the owner of record
85 and takes the property subject to all liens and real and
86 personal property taxes.



CHAPTER 155

**(H.B. 4567 - By Delegates Stalnaker, Cann, Fragale,
Caputo and Delong)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to enter into contracts granting long-term usage and related rights and privileges to third parties sufficient to attract private investment for the financing, construction and operation of additional lodging units at Stonewall Jackson Lake State Park; establishing requirements and restrictions regarding the development, operation and maintenance of additional lodging units and all contracts related to the additional lodging units; requiring the development of a lodging unit development plan that is to be presented to the Joint Committee on Government and Finance prior to development; and protecting the state from any liabilities or obligations associated with the development of the additional lodging units.

Be it enacted by the Legislature of West Virginia:

That §20-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, in addition to all other powers and authority
3 vested in the director, he or she is hereby authorized and
4 empowered to:

5 (1) Enter into contracts with third parties for the
6 financing, construction and operation of recreational, lodging
7 and ancillary facilities at Chief Logan State Park, Beech Fork
8 State Park, Tomlinson Run State Park, Stonewall Jackson
9 Lake State Park, Lost River State Park and Canaan Valley
10 Resort State Park. The contracts may allow and recognize
11 both direct and subsidiary investment arrangements. The
12 term of the contracts may not exceed a period of twenty-five
13 years, at which time the full title to the recreational facilities
14 shall vest in the state, except as otherwise provided in this
15 section;

16 (2) Enter into contracts with third parties for the
17 construction, but not the operation, of cabins at any state park
18 or forest. Upon completion of the construction of the cabins,
19 full title to the cabins shall immediately vest in the state and
20 the cabins shall be operated by the parks and recreation
21 section;

22 (3) Authorize the construction of at least five cabins by
23 any single third party in state parks and state forests which do
24 not offer the facilities on the effective date of this subsection;
25 and

26 (4) Propose emergency and legislative rules, in
27 accordance with the provisions of article three, chapter
28 twenty-nine-a of this code, that set the conditions upon which
29 the director may enter into a contract with a single third party
30 proposing to construct cabins.

31 (b) All contracts shall be presented to the Joint
32 Committee on Government and Finance for review and
33 comment prior to execution.

34 (c) A contract may provide for renewal for the purpose of
35 permitting continued operation of the facilities at the option
36 of the director for a term or terms not to exceed ten years.

37 (d) Except as otherwise authorized by this section, no
38 extension or renewal beyond the original twenty-five year
39 term may be executed by the director absent the approval of
40 the Joint Committee on Government and Finance.

41 (e) *Stonewall Jackson Lake State Park.* --

42 (1) With respect to the financing, construction and
43 operation of lodging at Stonewall Jackson Lake State Park,
44 in addition to the lodging in existence as of the first day of
45 July, two thousand eight, contracts entered into pursuant to
46 this section may grant, convey or provide for commercially
47 reasonable lodging usage and related rights and privileges all
48 on terms and conditions as the director may deem
49 appropriate, desirable or necessary to attract private
50 investment for the construction of additional lodging units.

51 (2) No contracts may be entered into prior to the
52 preparation of lodging unit development plans and standard
53 lodging unit contract documents in a form and at a level of
54 detail acceptable to the United States Army Corps of
55 Engineers and the director, and subsequent to the
56 presentation of the lodging unit development plans and
57 standard lodging unit contract documents to the Joint
58 Committee on Government and Finance for review and
59 comment.

60 (3) At a minimum, the lodging unit development plans
61 and standard lodging unit contracts shall comply with the
62 following requirements:

63 (A) That no more than one hundred additional lodging
64 units may be constructed, in addition to the lodging in
65 existence as of the first day of July, two thousand eight;

66 (B) That lodging unit contracts, with respect to any
67 additional lodging units that may be financed, constructed or
68 operated pursuant to the provision of this section, shall
69 generally conform to the contracts entered into by federal
70 agencies or the National Park Service with private parties
71 regarding privately financed property that is constructed,
72 developed or operated on public lands administered by
73 federal agencies or the National Park Service, subject to
74 modification and adaptation by the director as the director
75 deems appropriate, suitable and relevant to any lodging units
76 to be constructed at Stonewall Jackson Lake State Park.

77 (C) That a party granted rights and privileges under
78 lodging unit contracts awarded under the provisions of this
79 subsection shall have the right to renew his, her or its lodging
80 unit contract for successive terms not to extend beyond the
81 termination date of the state's lease with the United States
82 Army Corps of Engineers; or, in the event that the state's
83 lease with the United States Army Corps of Engineers is
84 extended beyond the termination date of the lease as of the
85 first day of July, two thousand seven, not to exceed five ten-
86 year extensions or renewals beyond the termination date of
87 the lease between the state and the United States Army Corps
88 of Engineers in effect as of the first day of July, two thousand
89 seven: *Provided*, That the party extended the renewal rights
90 is in compliance with all material rights, duties and
91 obligations arising under his, her or its contract and all
92 relevant and applicable provisions of federal, state and local
93 laws, rules, regulations, contracts or agreements at the time
94 of renewal: *Provided, however*, That if and in the event the
95 director makes an affirmative determination that further
96 renewals beyond the time periods set forth in this subsection
97 are in the best interest of the state and Stonewall Jackson
98 Lake State Park, giving due consideration to financial,
99 operational and other considerations deemed relevant and
100 material by the director, that the director may authorize
101 further renewals;

102 (D) That all rights and privileges arising under a lodging
103 unit contract shall be transferred to the state or the state's
104 designee upon the expiration or termination of the contract,
105 upon the terms and conditions as each contract may provide
106 or as may otherwise be agreed upon between the parties;

107 (E) That the state is not, and cannot be, obligated for any
108 costs, expenses, fees or other charges associated with the
109 development of the additional lodging units under this
110 subsection or the operation and maintenance of the additional
111 lodging units over time, including, but not limited to, costs
112 associated with infrastructure improvements associated with
113 development or operation of the additional lodging units. In
114 his or her discretion, the director may engage professionals
115 to assist the state in connection with its review and oversight
116 of development of the additional lodging units;

117 (F) That at any time following the initial term and first
118 renewal period of any lodging unit contract entered into with
119 a private party with respect to an additional lodging unit that
120 is constructed under this section, the state shall have the right
121 and option, in its sole discretion, to purchase a lodging unit
122 or lodging units in accordance with the provisions of this
123 subsection and any and all contracts that may be entered into
124 from time to time under this section;

125 (G) That at its sole option and discretion, the state may
126 elect to purchase a lodging unit from a private party. In that
127 event, the private party shall be paid the fair value of the
128 private party's residual rights and privileges under the
129 lodging unit contract, the residual rights and privileges to be
130 valued generally in accordance with the valuation standards
131 set forth in the National Park Service's standard contract
132 provisions, or other relevant federal agency standards
133 applicable to similar or like contract rights and provisions as
134 may be in existence at the time of transfer, all as the same
135 may be deemed relevant and appropriate by the director, and
136 all in the exercise of the director's reasonable discretion.

137 Nothing in this section is intended or shall be construed to
138 impose an obligation on the state to purchase, buy, buy out or
139 otherwise acquire or pay for any lodging unit under this
140 section, or to limit the right and ability of a private party to
141 donate or contribute his, her or its interest in and to any
142 lodging unit constructed under this section to the state or any
143 charitable foundation that may be established and operating
144 from time to time to support the continued operation and
145 development of Stonewall Jackson Lake State Park;

146 (H) That the state shall have no obligation whatsoever to
147 purchase, buy, buy out or otherwise acquire or pay for any
148 lodging unit that is developed or constructed under this
149 section; and

150 (I) The director shall have the right to review and approve
151 the form and content of all contracts that may be entered into
152 pursuant to this subsection in connection with the
153 development, operation and maintenance of additional
154 lodging units at Stonewall Jackson Lake State Park.



CHAPTER 156

**(Com. Sub. for H.B. 4357 - By Delegates White, DeLong, Shook,
Webster, Boggs, Kominar and Anderson)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, relating to the Neighborhood Investment Program Act; increasing the total maximum aggregate tax credit amount and extending the termination date of the tax credit.

Be it enacted by the Legislature of West Virginia:

That §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-8. Total maximum aggregate tax credit amount.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

§11-13J-8. Total maximum aggregate tax credit amount.

1 (a) The amount of tax credits allowed under this article
2 may not exceed two million five hundred thousand dollars in
3 any state fiscal year.

4 (b) Applications for project certification shall be filed
5 with the West Virginia development office. The West
6 Virginia development office shall record the date each
7 application is filed. All complete and valid applications shall
8 be considered for approval or disapproval in a timely manner
9 by the neighborhood assistance advisory board. The board
10 may, in its discretion, consider applications for approval or
11 disapproval at special or interim meetings for expedited
12 processing.

13 (c) When the total amount of tax credits certified under
14 this article equals the maximum amount of tax credits
15 allowed, as specified in subsection (a) of this section, in any
16 state fiscal year, no further certifications shall be issued in
17 that same fiscal year. Upon approval of a project by the
18 board, the director of the West Virginia development office
19 shall certify the approved project unless certification is
20 prohibited by the limitations and requirements set forth in
21 this article.

22 (d) All applications filed in any state fiscal year and not
23 certified during the state fiscal year in which they are filed
24 shall be null and void by operation of law on the last day of
25 the state fiscal year in which they are filed, and all applicants
26 which elect to seek certification of a project plan shall file

27 anew on and after the first day of the succeeding state fiscal
28 year.

**§11-13J-12. Program evaluation; expiration of credit;
preservation of entitlement.**

1 Beginning on the fifteenth day of December, two
2 thousand five, and every second year thereafter, the director
3 shall secure an independent review of the neighborhood
4 investment program created by this article and present the
5 findings to the Joint Committee on Government and Finance.
6 Unless sooner terminated by law, the Neighborhood
7 Investment Program Act terminates on the first day of July,
8 two thousand eleven. There is no entitlement to the tax credit
9 under this article for a contribution made to a certified project
10 after the first day of July, two thousand eleven, and no credit
11 is available to any taxpayer for any contribution made after
12 that date. Taxpayers which have gained entitlement to the
13 credit pursuant to eligible contributions made to certified
14 projects prior to the first day of July, two thousand eleven,
15 shall retain that entitlement and apply the credit in due course
16 pursuant to the requirements and limitations of this article.

CHAPTER 157

**(S.B. 775 - By Senators Fanning, Barnes, Bowman, Deem,
Facemyer, Green, McKenzie, Prezioso, Unger and White)**

[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §20-1-19; and to
amend and reenact §20-1-20 of said code, all relating to the

state parks and state forests of West Virginia; designating the state parks and state forests; requiring statutory approval to close, change the name or change the designated use of a state park or state forest; and clarifying limitations on acquiring land or constructing new buildings on a state park or state forest.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-1-19; and that §20-1-20 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-19. West Virginia state parks and state forests.

§20-1-20. Limitations on state parks and state forests; exceptions.

§20-1-19. West Virginia state parks and state forests.

- 1 (a) The state parks of West Virginia are:
- 2 (1) Audra; (2) Babcock; (3) Beartown; (4) Beech Fork;
- 3 (5) Berkeley Springs; (6) Blackwater Falls; (7)
- 4 Blennerhassett Island Historical; (8) Bluestone; (9) Cacapon
- 5 Resort; (10) Camp Creek; (11) Canaan Valley Resort; (12)
- 6 Carnifex Ferry Battlefield; (13) Cass Scenic Railroad; (14)
- 7 Cathedral; (15) Cedar Creek; (16) Chief Logan; (17) Droop
- 8 Mountain Battlefield; (18) Fairfax Stone Historical
- 9 Monument; (19) Hawks Nest; (20) Holly River; (21) Little
- 10 Beaver; (22) Lost River; (23) Moncove Lake; (24) North
- 11 Bend; (25) Pinnacle Rock; (26) Pipestem Resort; (27)
- 12 Prickett's Fort; (28) Stonewall Resort; (29) Tomlinson Run;
- 13 (30) Tu-Endie-Wei (Point Pleasant Battle Monument); (31)
- 14 Twin Falls Resort; (32) Tygart Lake; (33) Valley Falls; (34)
- 15 Watoga; and (35) Watters Smith Memorial.
- 16 (b) The state forests of West Virginia are:

17 (1) Cabwaylingo; (2) Calvin Price; (3) Camp Creek; (4)
18 Coopers Rock; (5) Greenbrier; (6) Kanawha; (7)
19 Kumbrabow; (8) Panther Forest/WMA, consisting of
20 approximately twenty-six acres containing park facilities; and
21 (9) Seneca.

22 (c) Neither the director nor any officer, employee or
23 agent of the Division of Natural Resources may close, change
24 the name or the designated use of a state park or state forest
25 without statutory authorization.

**§20-1-20. Limitations on state parks and state forests;
exceptions.**

1 (a)(1) The Legislature finds that the acquisition of land to
2 construct new or expand existing state parks and state forests
3 is costly. After these areas are constructed, they must be
4 maintained and personnel must be employed to operate the
5 facilities. These costs continue to increase and place a
6 burden on state revenues.

7 (2) The Legislature declares that there is an ultimate limit
8 to how many state parks and state forests, based upon its size,
9 population and financial resources, the State of West Virginia
10 can support. Further, the Legislature hereby declares that it
11 is within its authority to establish, provide for and maintain
12 limits on state parks and state forests.

13 (b) Without written notice to the Joint Committee on
14 Government and Finance, neither the director nor an officer,
15 employee or agent of the Division of Natural Resources may:

16 (1) Acquire, or authorize the acquisition of, land for any
17 new state park or state forest; or

18 (2) Construct, or authorize the construction of, any new
19 facility or building in any state park or state forest.

20 (c) Notice to the Joint Committee on Government and
21 Finance is not required for the following acquisitions and
22 construction projects:

23 (1) The director may authorize the construction of any
24 new facility or building that is constructed with donated
25 funds, materials and labor in an existing state park or state
26 forest; and

27 (2) The director may construct or authorize the
28 construction of any new facility or building built by state
29 employees when the total cost of materials does not exceed
30 twenty-five thousand dollars.

31 (d) Nothing in this section shall prohibit the director from
32 expending any appropriations that are designated to complete
33 land acquisitions or the construction of facilities and
34 buildings, including electric, water and sewage systems for
35 state parks and state forests.

36 (e) The director shall require that any new building has a
37 roof of sufficient slope in accordance with the current state
38 building code.



CHAPTER 158

**(Com. Sub. for H.B. 4355 - By Delegates Browning, Moore, Ellis,
Kominar, White and Burdiss)**

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to allowing the Hatfield-McCoy Regional Recreation Authority to retain civil penalties

imposed for violation of authority rules, for the benefit of the Hatfield-McCoy Recreation Area.

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:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-8. Violation of rules, criminal and civil penalties; use of funds.

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 Hatfield-
12 McCoy Regional Recreation Authority for use by the board
13 in its discretion for the benefit of the Hatfield-McCoy
14 Recreation Area. Effective July 1, 2008, the special revenue
15 fund known as the Hatfield-McCoy Recreation Fund shall be
16 terminated, and any and all funds remaining in the fund shall
17 be transferred from the fund and remitted to the Hatfield-
18 McCoy Regional Recreation Authority for use by the Board
19 in its discretion for the benefit of the Hatfield-McCoy
20 Recreation Area.

CHAPTER 159

**(Com. Sub. for H.B. 4129 - By Mr. Speaker, Mr. Thompson, and
Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-18; to amend and reenact §30-3-10a of said code; to amend said code by adding thereto a new section, designated §30-3-16a; to amend said code by adding thereto two new sections, designated §30-4-8a and §30-4-10a; to amend said code by adding thereto a new section, designated §30-5-10a; to amend said code by adding thereto a new section, designated §30-7-6a; to amend said code by adding thereto a new section, designated §30-8-5a; to amend said code by adding thereto a new section, designated §30-14A-5; to amend said code by adding thereto a new section, designated §30-20-8a; to amend said code by adding thereto a new section, designated §30-21-17; and to amend said code by adding thereto a new section, designated §30-28-8a, all relating to the establishment of special, retired, volunteer and inactive licenses for certain professions and occupations; special volunteer medical license; exception as to terminated policy with “tail insurance”; no extended coverage for certain circumstances; providing legislative rule-making authority to the respective boards to set licensure criteria and continuing education; providing for special volunteer licenses for certain health care providers providing volunteer services; waiving certain licensing fees; and providing civil immunity for special volunteer licenses for certain health care providers.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-1-18; that §30-3-10a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-3-16a; that said code be amended by adding thereto two new sections, designated §30-4-8a and §30-4-10a; that said code be amended by adding thereto a new section, designated §30-5-10a; that said code be amended by adding thereto a new section, designated §30-7-6a; that said code be amended by adding thereto a new section, designated §30-8-5a; that said code be amended by adding thereto a new section, designated §30-14A-5; that said code be amended by adding thereto a new section, designated §30-20-8a; that said code be amended by adding thereto a new section, designated §30-21-17; and that said code be amended by adding thereto a new section, designated §30-28-8a, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

- 1. General Provisions Applicable to State Boards.**
- 3. West Virginia Medical Practice Act.**
- 4. West Virginia Dental Practice Act.**
- 5. Pharmacists, Pharmacy Technicians, Pharmacy**
- 6. Interns and Pharmacies.**
- 7. Registered Professional Nurses.**
- 8. Optometrists.**
- 14A. Assistants to Osteopathic Physicians and Surgeons.**
- 20. Physical Therapists.**
- 21. Psychologists; School Psychologists.**
- 28. West Virginia Occupational Therapy Practice Act.**

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-18. Retired, volunteer and inactive status licenses.

- 1 (a) Every board referred to in this chapter may propose
- 2 rules for legislative approval in accordance with the
- 3 provisions of article three, chapter twenty-nine-a of this code,

4 to establish licensure criteria and continuing education
5 requirements for retired, volunteer and inactive licenses.

6 (b) If a board which establishes licensure criteria as
7 authorized in this section does not establish specific
8 continuing education requirements, the retired, volunteer or
9 inactive licensees shall comply with the same continuing
10 education requirements as established by the respective
11 boards for an active license.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

§30-3-16. Special volunteer physician assistant license; civil immunity for voluntary services rendered to indigents.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

1 (a) There is hereby established a special volunteer
2 medical license for physicians retired or retiring from the
3 active practice of medicine who wish to donate their
4 expertise for the medical care and treatment of indigent and
5 needy patients in the clinic setting of clinics organized, in
6 whole or in part, for the delivery of health care services
7 without charge. The special volunteer medical license shall
8 be issued by the West Virginia Board of Medicine to
9 physicians licensed or otherwise eligible for licensure under
10 this article and the rules promulgated hereunder without the
11 payment of any application fee, license fee or renewal fee,
12 shall be issued for a fiscal year or part thereof, and shall be
13 renewable annually. The board shall develop application
14 forms for the special license provided for in this subsection
15 which shall contain the physician's acknowledgment that:
16 (1) The physician's practice under the special volunteer
17 medical license will be exclusively and totally devoted to
18 providing medical care to needy and indigent persons in West
19 Virginia; (2) the physician will not receive any payment or

20 compensation, either direct or indirect, or have the
21 expectation of any payment or compensation, for any medical
22 services rendered under the special volunteer medical license;
23 (3) the physician will supply any supporting documentation
24 that the board may reasonably require; and (4) the physician
25 agrees to continue to participate in continuing medical
26 education as required of physicians in active practice.

27 (b) Any physician who renders any medical service to
28 indigent and needy patients of a clinic organized, in whole or
29 in part, for the delivery of health care services without charge
30 under a special volunteer medical license authorized under
31 subsection (a) of this section without payment or
32 compensation or the expectation or promise of payment or
33 compensation is immune from liability for any civil action
34 arising out of any act or omission resulting from the
35 rendering of the medical service at the clinic unless the act or
36 omission was the result of the physician's gross negligence or
37 willful misconduct. In order for the immunity under this
38 subsection to apply, there must be a written agreement
39 between the physician and the clinic pursuant to which the
40 physician will provide voluntary noncompensated medical
41 services under the control of the clinic to patients of the clinic
42 before the rendering of any services by the physician at the
43 clinic: *Provided*, That any clinic entering into such written
44 agreement shall be required to maintain liability coverage of
45 not less than one million dollars per occurrence.

46 (c) Notwithstanding the provisions of subsection (a) of
47 this section, a clinic organized, in whole or in part, for the
48 delivery of health care services without charge shall not be
49 relieved from imputed liability for the negligent acts of a
50 physician rendering voluntary medical services at or for the
51 clinic under a special volunteer medical license authorized
52 under subsection (a) of this section.

53 (d) For purposes of this section, "otherwise eligible for
54 licensure" means the satisfaction of all the requirements for

55 licensure as listed in section ten of this article and in the
56 legislative rules promulgated hereunder, except the fee
57 requirements of subsections (b) and (d) of said section and of
58 the legislative rule promulgated by the board relating to fees.

59 (e) Nothing in this section may be construed as requiring
60 the board to issue a special volunteer medical license to any
61 physician whose medical license is or has been subject to any
62 disciplinary action or to any physician who has surrendered
63 a medical license or caused such license to lapse, expire and
64 become invalid in lieu of having a complaint initiated or
65 other action taken against his or her medical license, or who
66 has elected to place a medical license in inactive status in lieu
67 of having a complaint initiated or other action taken against
68 his or her medical license, or who have been denied a
69 medical license.

70 (f) Any policy or contract of liability insurance providing
71 coverage for liability sold, issued or delivered in this state to
72 any physician covered under the provisions of this article
73 shall be read so as to contain a provision or endorsement
74 whereby the company issuing such policy waives or agrees
75 not to assert as a defense on behalf of the policyholder or any
76 beneficiary thereof, to any claim covered by the terms of
77 such policy within the policy limits, the immunity from
78 liability of the insured by reason of the care and treatment of
79 needy and indigent patients by a physician who holds a
80 special volunteer medical license: *Provided*, That this
81 subsection shall not apply to a terminated policy, terminated
82 contract of liability insurance or extended reporting
83 endorsement attached thereto that provides "tail insurance"
84 as defined by section two, article twenty-d, chapter thirty-
85 three of this code: *Provided, however*, That nothing within
86 this subsection shall be construed to extend coverage under
87 a terminated policy or terminated contract of liability
88 insurance or any extended reporting endorsement attached
89 thereto to: (1) Alter or amend the effective policy period of

90 any policy, contract of liability insurance or extended
91 reporting endorsement; or (2) cover the treatment of indigent
92 and needy patients by a physician who holds a special
93 volunteer medical license.

**§30-3-16a. Special volunteer physician assistant license; civil
immunity for voluntary services rendered to
indigents.**

1 (a) There is established a special volunteer physician
2 assistant license for physician assistants retired or retiring
3 from the active practice of medicine who wish to donate their
4 expertise for the medical care and treatment of indigent and
5 needy patients in the clinic setting of clinics organized, in
6 whole or in part, for the delivery of health care services
7 without charge. The special volunteer physician assistant
8 license shall be issued by the West Virginia Board of
9 Medicine to physician assistants licensed or otherwise
10 eligible for licensure under this article and the legislative
11 rules promulgated hereunder without the payment of an
12 application fee, license fee or renewal fee, and the initial
13 license shall be issued for the remainder of the licensing
14 period, and renewed consistent with the boards other
15 licensing requirements. The board shall develop application
16 forms for the special license provided in this subsection
17 which shall contain the physician assistant's acknowledgment
18 that:

19 (1) The physician assistant's practice under the special
20 volunteer physician assistant license will be exclusively
21 devoted to providing medical care to needy and indigent
22 persons in West Virginia;

23 (2) The physician assistant will not receive any payment
24 or compensation, either direct or indirect, or have the
25 expectation of any payment or compensation, for any medical
26 services rendered under the special volunteer physician
27 assistant license;

28 (3) The physician assistant will supply any supporting
29 documentation that the board may reasonably require; and

30 (4) The physician assistant agrees to continue to
31 participate in continuing education as required by the board
32 for the special volunteer physician assistant license.

33 (b) Any physician assistant who renders any medical
34 service to indigent and needy patients of a clinic organized,
35 in whole or in part, for the delivery of health care services
36 without charge under a special volunteer physician assistant
37 license authorized under subsection (a) of this section without
38 payment or compensation or the expectation or promise of
39 payment or compensation, is immune from liability for any
40 civil action arising out of any act or omission resulting from
41 the rendering of the medical service at the clinic unless the
42 act or omission was the result of the physician assistant's
43 gross negligence or willful misconduct. In order for the
44 immunity under this subsection to apply, there must be a
45 written agreement between the physician assistant and the
46 clinic pursuant to which the physician assistant will provide
47 voluntary uncompensated medical services under the control
48 of the clinic to patients of the clinic before the rendering of
49 any services by the physician assistant at the clinic:
50 *Provided*, That any clinic entering into such written
51 agreement is required to maintain liability coverage of not
52 less than one million dollars per occurrence.

53 (c) Notwithstanding the provisions of subsection (b) of
54 this section, a clinic organized, in whole or in part, for the
55 delivery of health care services without charge is not relieved
56 from imputed liability for the negligent acts of a physician
57 assistant rendering voluntary medical services at or for the
58 clinic under a special volunteer physician assistant license
59 authorized under subsection (a) of this section.

60 (d) For purposes of this section, "otherwise eligible for
61 licensure" means the satisfaction of all the requirements for

62 licensure as listed in section sixteen of this article and in the
63 legislative rules promulgated thereunder, except the fee
64 requirements of subsection (n) of that section and of the
65 legislative rules promulgated by the board relating to fees.

66 (e) Nothing in this section may be construed as requiring
67 the board to issue a special volunteer physician assistant
68 license to any physician assistant whose license is or has been
69 subject to any disciplinary action or to any physician assistant
70 who has surrendered a physician assistant license or caused
71 such license to lapse, expire and become invalid in lieu of
72 having a complaint initiated or other action taken against his
73 or her license, or who has elected to place a physician
74 assistant license in inactive status in lieu of having a
75 complaint initiated or other action taken against his or her
76 license, or who has been denied a physician assistant license.

77 (f) Any policy or contract of liability insurance providing
78 coverage for liability sold, issued or delivered in this state to
79 any physician assistant covered under the provisions of this
80 article, shall be read so as to contain a provision or
81 endorsement whereby the company issuing such policy
82 waives or agrees not to assert as a defense on behalf of the
83 policyholder or any beneficiary thereof, to any claim covered
84 by the terms of such policy within the policy limits, the
85 immunity from liability of the insured by reason of the care
86 and treatment of needy and indigent patients by a physician
87 assistant who holds a special volunteer physician assistant
88 license.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-8a. Special volunteer dental license; civil immunity for voluntary services rendered to indigents.

§30-4-10a. Special volunteer dental hygienist license; civil immunity for voluntary services rendered to indigents.

§30-4-8a. Special volunteer dental license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer dental license
2 for dentists retired or retiring from the active practice of
3 dentistry who wish to donate their expertise for the dental
4 care and treatment of indigent and needy patients in the clinic
5 setting of clinics organized, in whole or in part, for the
6 delivery of health care services without charge. The special
7 volunteer dental license shall be issued by the West Virginia
8 Board of Dental Examiners to dentists licensed or otherwise
9 eligible for licensure under this article and the legislative
10 rules promulgated hereunder without the payment of a
11 application fee, license fee or renewal fee, shall be issued for
12 the remainder of the licensing period, and renewed consistent
13 with the boards other licensing requirements. The board shall
14 develop application forms for the special license provided in
15 this subsection which shall contain the dentist's
16 acknowledgment that:

17 (1) The dentist's practice under the special volunteer
18 dental license will be exclusively devoted to providing dental
19 care to needy and indigent persons in West Virginia;

20 (2) The dentist will not receive any payment or
21 compensation, either direct or indirect, or have the
22 expectation of any payment or compensation, for any dental
23 services rendered under the special volunteer dental license;

24 (3) The dentist will supply any supporting documentation
25 that the board may reasonably require; and

26 (4) The dentist agrees to continue to participate in
27 continuing dental education as required by the board for a
28 special volunteer dental license.

29 (b) Any dentist who renders any dental service to
30 indigent and needy patients of a clinic organized, in whole or
31 in part, for the delivery of health care services without charge
32 under a special volunteer dental license authorized under

33 subsection (a) of this section without payment or
34 compensation or the expectation or promise of payment or
35 compensation is immune from liability for any civil action
36 arising out of any act or omission resulting from the
37 rendering of the dental service at the clinic unless the act or
38 omission was the result of the dentist's gross negligence or
39 willful misconduct. In order for the immunity under this
40 subsection to apply, there must be a written agreement
41 between the dentist and the clinic pursuant to which the
42 dentist will provide voluntary uncompensated dental services
43 under the control of the clinic to patients of the clinic before
44 the rendering of any services by the dentist at the clinic:
45 *Provided*, That any clinic entering into such written
46 agreement is required to maintain liability coverage of not
47 less than one million dollars per occurrence.

48 (c) Notwithstanding the provisions of subsection (b) of
49 this section, a clinic organized, in whole or in part, for the
50 delivery of health care services without charge is not relieved
51 from imputed liability for the negligent acts of a dentist
52 rendering voluntary dental services at or for the clinic under
53 a special volunteer dental license authorized under subsection
54 (a) of this section.

55 (d) For purposes of this section, "otherwise eligible for
56 licensure" means the satisfaction of all the requirements for
57 licensure as listed in section eight of this article and in the
58 legislative rules promulgated thereunder, except the fee
59 requirements of subdivision six of that section and of the
60 legislative rules promulgated by the board relating to fees.

61 (e) Nothing in this section may be construed as requiring
62 the board to issue a special volunteer dental license to any
63 dentist whose dental license is or has been subject to any
64 disciplinary action or to any dentist who has surrendered a
65 dental license or caused such license to lapse, expire and
66 become invalid in lieu of having a complaint initiated or

67 other action taken against his or her dental license, or who
68 has elected to place a dental license in inactive status in lieu
69 of having a complaint initiated or other action taken against
70 his or her dental license, or who has been denied a dental
71 license.

72 (f) Any policy or contract of liability insurance providing
73 coverage for liability sold, issued or delivered in this state to
74 any dentist covered under the provisions of this article shall
75 be read so as to contain a provision or endorsement whereby
76 the company issuing such policy waives or agrees not to
77 assert as a defense on behalf of the policyholder or any
78 beneficiary thereof, to any claim covered by the terms of
79 such policy within the policy limits, the immunity from
80 liability of the insured by reason of the care and treatment of
81 needy and indigent patients by a dentist who holds a special
82 volunteer dental license.

**§30-4-10a. Special volunteer dental hygienist license; civil
immunity for voluntary services rendered to
indigents.**

1 (a) There is established a special volunteer dental
2 hygienist license for dental hygienists retired or retiring from
3 the active practice of dental hygiene who wish to donate their
4 expertise for the care and treatment of indigent and needy
5 patients in the clinic setting of clinics organized, in whole or
6 in part, for the delivery of health care services without
7 charge. The special volunteer dental hygienist license shall
8 be issued by the West Virginia Board of Dental Examiners to
9 dental hygienists licensed or otherwise eligible for licensure
10 under this article and the legislative rules promulgated
11 hereunder without the payment of an application fee, license
12 fee or renewal fee, shall be issued for the remainder of the
13 licensing period, and renewed consistent with the boards
14 other licensing requirements. The board shall develop
15 application forms for the special license provided in this

16 subsection which shall contain the dental hygienist's
17 acknowledgment that:

18 (1) The dental hygienist's practice under the special
19 volunteer dental hygienist license will be exclusively devoted
20 to providing dental hygiene care to needy and indigent
21 persons in West Virginia;

22 (2) The dental hygienist will not receive any payment or
23 compensation, either direct or indirect, or have the
24 expectation of any payment or compensation, for any dental
25 hygiene services rendered under the special volunteer dental
26 hygienist license;

27 (3) The dental hygienist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The dental hygienist agrees to continue to participate
30 in continuing professional education as required by the board
31 for the special volunteer dental hygienist.

32 (b) Any dental hygienist who renders any dental hygiene
33 service to indigent and needy patients of a clinic organized,
34 in whole or in part, for the delivery of health care services
35 without charge under a special volunteer dental hygienist
36 license authorized under subsection (a) of this section without
37 payment or compensation or the expectation or promise of
38 payment or compensation is immune from liability for any
39 civil action arising out of any act or omission resulting from
40 the rendering of the dental hygiene service at the clinic unless
41 the act or omission was the result of the dental hygienist's
42 gross negligence or willful misconduct. In order for the
43 immunity under this subsection to apply, there must be a
44 written agreement between the dental hygienist and the clinic
45 pursuant to which the dental hygienist will provide voluntary
46 uncompensated dental hygiene services under the control of
47 the clinic to patients of the clinic before the rendering of any
48 services by the dental hygienist at the clinic: *Provided*, That

49 any clinic entering into such written agreement is required to
50 maintain liability coverage of not less than one million
51 dollars per occurrence.

52 (c) Notwithstanding the provisions of subsection (b) of
53 this section, a clinic organized, in whole or in part, for the
54 delivery of health care services without charge is not relieved
55 from imputed liability for the negligent acts of a dental
56 hygienist rendering voluntary dental hygiene services at or
57 for the clinic under a special volunteer dental hygienist
58 license authorized under subsection (a) of this section.

59 (d) For purposes of this section, “otherwise eligible for
60 licensure” means the satisfaction of all the requirements for
61 licensure as listed in section ten of this article and in the
62 legislative rules promulgated thereunder, except the fee
63 requirements of subdivision (6) of that section and of the
64 legislative rules promulgated by the board relating to fees.

65 (e) Nothing in this section may be construed as requiring
66 the board to issue a special volunteer dental hygienist license
67 to any dental hygienist whose license is or has been subject
68 to any disciplinary action or to any dental hygienist who has
69 surrendered a license or caused such license to lapse, expire
70 and become invalid in lieu of having a complaint initiated or
71 other action taken against his or her dental hygienist license,
72 or who has elected to place a dental hygienist license in
73 inactive status in lieu of having a complaint initiated or other
74 action taken against his or her license, or who has been
75 denied a dental hygienist license.

76 (f) Any policy or contract of liability insurance providing
77 coverage for liability sold, issued or delivered in this state to
78 any dental hygienist covered under the provisions of this
79 article shall be read so as to contain a provision or
80 endorsement whereby the company issuing such policy
81 waives or agrees not to assert as a defense on behalf of the
82 policyholder or any beneficiary thereof, to any claim covered

83 by the terms of such policy within the policy limits, the
84 immunity from liability of the insured by reason of the care
85 and treatment of needy and indigent patients by a dental
86 hygienist who holds a special volunteer dental hygienist
87 license.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

**§30-5-10a. Special volunteer pharmacist license; civil immunity
for voluntary services rendered to indigents.**

1 (a) There is established a special volunteer pharmacist
2 license for pharmacists retired or retiring from the active
3 practice of pharmaceutical care who wish to donate their
4 expertise for the pharmaceutical care and treatment of
5 indigent and needy patients in the clinic setting of clinics
6 organized, in whole or in part, for the delivery of health care
7 services without charge. The special volunteer pharmacist
8 license shall be issued by the West Virginia Board of
9 Pharmacy to pharmacists licensed or otherwise eligible for
10 licensure under this article and the legislative rules
11 promulgated hereunder without the payment of an application
12 fee, license fee or renewal fee, and the initial license shall be
13 issued for the remainder of the licensing period, and renewed
14 consistent with the boards other licensing requirements. The
15 board shall develop application forms for the special license
16 provided in this subsection which shall contain the
17 pharmacist's acknowledgment that:

18 (1) The pharmacist's practice under the special volunteer
19 pharmacist license will be exclusively devoted to providing
20 pharmaceutical care to needy and indigent persons in West
21 Virginia;

22 (2) The pharmacist will not receive any payment or
23 compensation, either direct or indirect, or have the

24 expectation of any payment or compensation, for any
25 pharmaceutical services rendered under the special volunteer
26 pharmacist license;

27 (3) The pharmacist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The pharmacist agrees to continue to participate in
30 continuing professional education as required by the board
31 for the special volunteer pharmacist license.

32 (b) Any pharmacist who renders any pharmaceutical
33 service to indigent and needy patients of a clinic organized,
34 in whole or in part, for the delivery of health care services
35 without charge under a special volunteer pharmacist license
36 authorized under subsection (a) of this section without
37 payment or compensation or the expectation or promise of
38 payment or compensation is immune from liability for any
39 civil action arising out of any act or omission resulting from
40 the rendering of the pharmaceutical service at the clinic
41 unless the act or omission was the result of the pharmacist's
42 gross negligence or willful misconduct. In order for the
43 immunity under this subsection to apply, there must be a
44 written agreement between the pharmacist and the clinic
45 pursuant to which the pharmacist will provide voluntary
46 uncompensated pharmaceutical services under the control of
47 the clinic to patients of the clinic before the rendering of any
48 services by the pharmacist at the clinic: *Provided*, That any
49 clinic entering into such written agreement is required to
50 maintain liability coverage of not less than one million
51 dollars per occurrence.

52 (c) Notwithstanding the provisions of subsection (b) of
53 this section, a clinic organized, in whole or in part, for the
54 delivery of health care services without charge is not relieved
55 from imputed liability for the negligent acts of a pharmacist
56 rendering voluntary pharmaceutical services at or for the

57 clinic under a special volunteer pharmacist license authorized
58 under subsection (a) of this section.

59 (d) For purposes of this section, “otherwise eligible for
60 licensure” means the satisfaction of all the requirements for
61 licensure as listed in section five of this article and in the
62 legislative rules promulgated thereunder, except the fee
63 requirements of subsection (b) of that section and of the
64 legislative rules promulgated by the board relating to fees.

65 (e) Nothing in this section may be construed as requiring
66 the board to issue a special volunteer pharmacist license to
67 any pharmacist whose license is or has been subject to any
68 disciplinary action or to any pharmacist who has surrendered
69 a license or caused such license to lapse, expire and become
70 invalid in lieu of having a complaint initiated or other action
71 taken against his or her license, or who has elected to place
72 a pharmacist license in inactive status in lieu of having a
73 complaint initiated or other action taken against his or her
74 license, or who has been denied a pharmacist license.

75 (f) Any policy or contract of liability insurance providing
76 coverage for liability sold, issued or delivered in this state to
77 any pharmacist covered under the provisions of this article
78 shall be read so as to contain a provision or endorsement
79 whereby the company issuing such policy waives or agrees
80 not to assert as a defense on behalf of the policyholder or any
81 beneficiary thereof, to any claim covered by the terms of
82 such policy within the policy limits, the immunity from
83 liability of the insured by reason of the care and treatment of
84 needy and indigent patients by a pharmacist who holds a
85 special volunteer pharmacist license.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

**§30-7-6a. Special volunteer registered professional nurse
license; civil immunity for voluntary services
rendered to indigents.**

1 (a) There is established a special volunteer license for
2 registered professional nurses retired or retiring from the
3 active practice of nursing who wish to donate their expertise
4 for the care and treatment of indigent and needy patients in
5 the clinic setting of clinics organized, in whole or in part, for
6 the delivery of health care services without charge. The
7 special volunteer registered professional nurse license shall
8 be issued by the West Virginia Board of Examiners for
9 registered professional nurses to registered professional
10 nurses licensed or otherwise eligible for licensure under this
11 article and the legislative rules promulgated hereunder
12 without the payment of an application fee, license fee or
13 renewal fee, shall be issued for the remainder of the licensing
14 period, and renewed consistent with the boards other
15 licensing requirements. The board shall develop application
16 forms for the special license provided in this subsection
17 which shall contain the registered professional nurse's
18 acknowledgment that:

19 (1) The registered professional nurse's practice under the
20 special volunteer registered professional nurse license will be
21 exclusively devoted to providing nursing care to needy and
22 indigent persons in West Virginia;

23 (2) The registered professional nurse will not receive any
24 payment or compensation, either direct or indirect, or have
25 the expectation of any payment or compensation, for any
26 nursing services rendered under the special volunteer
27 registered professional nurse license;

28 (3) The registered professional nurse will supply any
29 supporting documentation that the board may reasonably
30 require; and

31 (4) The registered professional nurse agrees to continue
32 to participate in continuing education as required by the
33 board for the special volunteer registered professional nurse
34 license.

35 (b) Any registered professional nurse who renders
36 nursing service to indigent and needy patients of a clinic
37 organized, in whole or in part, for the delivery of health care
38 services without charge under a special volunteer registered
39 professional nurse license authorized under subsection (a) of
40 this section without payment or compensation or the
41 expectation or promise of payment or compensation is
42 immune from liability for any civil action arising out of any
43 act or omission resulting from the rendering of the nursing
44 service at the clinic unless the act or omission was the result
45 of the registered professional nurse's gross negligence or
46 willful misconduct. In order for the immunity under this
47 subsection to apply, there must be a written agreement
48 between the registered professional nurse and the clinic
49 pursuant to which the registered professional nurse will
50 provide voluntary uncompensated nursing services under the
51 control of the clinic to patients of the clinic before the
52 rendering of any services by the registered professional nurse
53 at the clinic: *Provided*, That any clinic entering into such
54 written agreement is required to maintain liability coverage
55 of not less than one million dollars per occurrence.

56 (c) Notwithstanding the provisions of subsection (b) of
57 this section, a clinic organized, in whole or in part, for the
58 delivery of health care services without charge is not relieved
59 from imputed liability for the negligent acts of a registered
60 professional nurse rendering voluntary nursing services at or
61 for the clinic under a special volunteer registered professional
62 nurse license authorized under subsection (a) of this section.

63 (d) For purposes of this section, "otherwise eligible for
64 licensure" means the satisfaction of all the requirements for
65 licensure as listed in section six of this article and in the
66 legislative rules promulgated thereunder, except the fee
67 requirements of that section and of the legislative rules
68 promulgated by the board relating to fees.

69 (e) Nothing in this section may be construed as requiring
70 the board to issue a special volunteer registered professional
71 nurse license to any registered professional nurse whose
72 license is or has been subject to any disciplinary action or to
73 any registered professional nurse who has surrendered his or
74 her license or caused such license to lapse, expire and
75 become invalid in lieu of having a complaint initiated or
76 other action taken against his or her license, or who has
77 elected to place a registered professional nurse license in
78 inactive status in lieu of having a complaint initiated or other
79 action taken against his or her license, or who has been
80 denied a registered professional nurse license.

81 (f) Any policy or contract of liability insurance providing
82 coverage for liability sold, issued or delivered in this state to
83 any registered professional nurse covered under the
84 provisions of this article shall be read so as to contain a
85 provision or endorsement whereby the company issuing such
86 policy waives or agrees not to assert as a defense on behalf of
87 the policyholder or any beneficiary thereof, to any claim
88 covered by the terms of such policy within the policy limits,
89 the immunity from liability of the insured by reason of the
90 care and treatment of needy and indigent patients by a
91 registered professional nurse who holds a special volunteer
92 registered professional nurse license.

ARTICLE 8. OPTOMETRISTS.

§30-8-5a. Special volunteer certificate of registration; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer certificate of
2 registration for optometrists retired or retiring from the active
3 practice of optometry who wish to donate their expertise for
4 the care and treatment of indigent and needy patients in the
5 clinic setting of clinics organized, in whole or in part, for the
6 delivery of health care services without charge. The special

7 volunteer certificate of registration shall be issued by the
8 West Virginia Board of Optometry to optometrists registered
9 or otherwise eligible for registration under this article and the
10 legislative rules promulgated hereunder without the payment
11 of an application fee, license fee or renewal fee, and shall be
12 issued for the remainder of the licensing period, and renewed
13 consistent with the boards other licensing requirements. The
14 board shall develop application forms for the special
15 certificate of registration provided in this subsection which
16 shall contain the optometrist's acknowledgment that:

17 (1) The optometrist's practice under the special volunteer
18 certificate of registration will be exclusively devoted to
19 providing optometrical care to needy and indigent persons in
20 West Virginia;

21 (2) The optometrist will not receive any payment or
22 compensation, either direct or indirect, or have the
23 expectation of any payment or compensation, for any
24 optometrical services rendered under the special volunteer
25 certificate of registration;

26 (3) The optometrist will supply any supporting
27 documentation that the board may reasonably require; and

28 (4) The optometrist agrees to continue to participate in
29 continuing education as required by the board for a special
30 volunteer optometrist license.

31 (b) Any optometrist who renders any optometrical service
32 to indigent and needy patients of a clinic organized, in whole
33 or in part, for the delivery of health care services without
34 charge under a special volunteer certificate of registration
35 authorized under subsection (a) of this section without
36 payment or compensation or the expectation or promise of
37 payment or compensation is immune from liability for any
38 civil action arising out of any act or omission resulting from
39 the rendering of the optometrical service at the clinic unless

40 the act or omission was the result of the optometrist's gross
41 negligence or willful misconduct. In order for the immunity
42 under this subsection to apply, there must be a written
43 agreement between the optometrist and the clinic pursuant to
44 which the optometrist will provide voluntary uncompensated
45 optometrical services under the control of the clinic to
46 patients of the clinic before the rendering of any services by
47 the optometrist at the clinic: *Provided*, That any clinic
48 entering into such written agreement is required to maintain
49 liability coverage of not less than one million dollars per
50 occurrence.

51 (c) Notwithstanding the provisions of subsection (b) of
52 this section, a clinic organized, in whole or in part, for the
53 delivery of health care services without charge is not relieved
54 from imputed liability for the negligent acts of an optometrist
55 rendering voluntary optometrical services at or for the clinic
56 under a special volunteer certificate of registration authorized
57 under subsection (a) of this section.

58 (d) For purposes of this section, "otherwise eligible for
59 registration" means the satisfaction of all the requirements for
60 registration as listed in section five of this article and in the
61 legislative rules promulgated thereunder, except the fee
62 requirements of section seven of this article and of the
63 legislative rules promulgated by the board relating to fees.

64 (e) Nothing in this section may be construed as requiring
65 the board to issue a special volunteer certificate of
66 registration to any optometrist whose certificate of
67 registration is or has been subject to any disciplinary action
68 or to any optometrist who has surrendered a certificate of
69 registration or caused such registration to lapse, expire and
70 become invalid in lieu of having a complaint initiated or
71 other action taken against his or her registration, or who has
72 elected to place a certificate of registration in inactive status
73 in lieu of having a complaint initiated or other action taken

74 against his or her registration, or who has been denied a
75 certificate of registration.

76 (f) Any policy or contract of liability insurance providing
77 coverage for liability sold, issued or delivered in this state to
78 any optometrist covered under the provisions of this article
79 shall be read so as to contain a provision or endorsement
80 whereby the company issuing such policy waives or agrees
81 not to assert as a defense on behalf of the policyholder or any
82 beneficiary thereof, to any claim covered by the terms of
83 such policy within the policy limits, the immunity from
84 liability of the insured by reason of the care and treatment of
85 needy and indigent patients by an optometrist who holds a
86 special volunteer certificate of registration.

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-5. Special volunteer osteopathic physician assistant certification; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer osteopathic
2 physician assistant certificate for osteopathic physician
3 assistants retired or retiring from the active practice of
4 osteopathy who wish to donate their expertise for the medical
5 care and treatment of indigent and needy patients in the clinic
6 setting of clinics organized, in whole or in part, for the
7 delivery of health care services without charge. The special
8 volunteer osteopathic physician assistant certificate shall be
9 issued by the West Virginia Board of Osteopathy to
10 osteopathic physician assistants certified or otherwise eligible
11 for certification under this article and the legislative rules
12 promulgated hereunder without the payment of an application
13 fee, license fee or renewal fee, shall be issued for and the
14 remainder of the licensing period, and renewed consistent
15 with the boards other licensing requirements. The board shall
16 develop application forms for the special certificate provided

17 in this subsection which shall contain the osteopathic
18 physician assistant's acknowledgment that:

19 (1) The osteopathic physician assistant's practice under
20 the special volunteer osteopathic physician assistant
21 certificate will be exclusively devoted to providing
22 osteopathic care to needy and indigent persons in West
23 Virginia;

24 (2) The osteopathic physician assistant will not receive
25 any payment or compensation, either direct or indirect, or
26 have the expectation of any payment or compensation, for
27 any osteopathic services rendered under the special volunteer
28 osteopathic physician assistant certificate;

29 (3) The osteopathic physician assistant will supply any
30 supporting documentation that the board may reasonably
31 require; and

32 (4) The osteopathic physician assistant agrees to continue
33 to participate in continuing education as required by the
34 board for a special volunteer osteopathic physician assistant
35 license.

36 (b) Any osteopathic physician assistant who renders any
37 osteopathic service to indigent and needy patients of a clinic
38 organized, in whole or in part, for the delivery of health care
39 services without charge under a special volunteer osteopathic
40 physician assistant certificate authorized under subsection (a)
41 of this section without payment or compensation or the
42 expectation or promise of payment or compensation, is
43 immune from liability for any civil action arising out of any
44 act or omission resulting from the rendering of the
45 osteopathic service at the clinic unless the act or omission
46 was the result of the osteopathic physician assistant's gross
47 negligence or willful misconduct. In order for the immunity
48 under this subsection to apply, there must be a written
49 agreement between the osteopathic physician assistant and

50 the clinic pursuant to which the osteopathic physician
51 assistant will provide voluntary uncompensated medical
52 services under the control of the clinic to patients of the clinic
53 before the rendering of any services by the osteopathic
54 physician assistant at the clinic: *Provided*, That any clinic
55 entering into such written agreement is required to maintain
56 liability coverage of not less than one million dollars per
57 occurrence.

58 (c) Notwithstanding the provisions of subsection (b) of
59 this section, a clinic organized, in whole or in part, for the
60 delivery of health care services without charge is not relieved
61 from imputed liability for the negligent acts of an osteopathic
62 physician assistant rendering voluntary medical services at or
63 for the clinic under a special volunteer osteopathic physician
64 assistant certificate authorized under subsection (a) of this
65 section.

66 (d) For purposes of this section, “otherwise eligible for
67 certification” means the satisfaction of all the requirements
68 for certification as listed in section one of this article and in
69 the legislative rules promulgated thereunder. The term does
70 not include the fee requirement of section three of this article
71 or of legislative rules promulgated by the board relating to
72 fees.

73 (e) Nothing in this section may be construed as requiring
74 the board to issue a special volunteer osteopathic physician
75 assistant certificate to any osteopathic physician assistant
76 whose certificate is or has been subject to any disciplinary
77 action or to any osteopathic physician assistant who has
78 surrendered an osteopathic physician assistant certificate or
79 caused such certificate to lapse, expire and become invalid in
80 lieu of having a complaint initiated or other action taken
81 against his or her certificate, or who has elected to place an
82 osteopathic physician assistant certificate in inactive status in
83 lieu of having a complaint initiated or other action taken

84 against his or her certificate, or who has been denied an
85 osteopathic physician assistant certificate.

86 (f) Any policy or contract of liability insurance providing
87 coverage for liability sold, issued or delivered in this state to
88 any osteopathic physician assistant covered under the
89 provisions of this article, shall be read so as to contain a
90 provision or endorsement whereby the company issuing such
91 policy waives or agrees not to assert as a defense on behalf of
92 the policyholder or any beneficiary thereof, to any claim
93 covered by the terms of such policy within the policy limits,
94 the immunity from liability of the insured by reason of the
95 care and treatment of needy and indigent patients by an
96 osteopathic physician assistant who holds a special volunteer
97 osteopathic physician assistant certificate.

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-8a. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 physical therapists or physical therapy assistants, as the case
3 may be, retired or retiring from active practice who wish to
4 donate their expertise for the care and treatment of indigent
5 and needy patients in the clinic setting of clinics organized,
6 in whole or in part, for the delivery of health care services
7 without charge. The special volunteer license provided by
8 this section shall be issued by the West Virginia Board of
9 Physical Therapy to physical therapists or physical therapist
10 assistants licensed or otherwise eligible for licensure under
11 this article and the legislative rules promulgated hereunder
12 without the payment of an application fee, license fee or
13 renewal fee, and the initial license shall be issued for the
14 remainder of the licensing period, and renewed consistent
15 with the boards other licensing requirements. The board shall
16 develop application forms for the special license provided in

17 this subsection which shall contain the applicant's
18 acknowledgment that:

19 (1) The applicant's practice under the special volunteer
20 license will be exclusively devoted to providing physical
21 therapy care to needy and indigent persons in West Virginia;

22 (2) The applicant will not receive any payment or
23 compensation, either direct or indirect, or have the
24 expectation of any payment or compensation, for any
25 physical therapy services rendered under the special
26 volunteer license;

27 (3) The applicant will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The applicant agrees to continue to participate in
30 continuing education as required of by the board for a special
31 volunteer physical therapists or physical therapist assistants
32 license, as the case may be.

33 (b) Any physical therapist or physical therapist assistant
34 who renders any physical therapy service to indigent and
35 needy patients of a clinic organized, in whole or in part, for
36 the delivery of health care services without charge under a
37 special volunteer license authorized under subsection (a) of
38 this section without payment or compensation or the
39 expectation or promise of payment or compensation is
40 immune from liability for any civil action arising out of any
41 act or omission resulting from the rendering of the physical
42 therapy service at the clinic unless the act or omission was
43 the result of gross negligence or willful misconduct on the
44 part of the physical therapist or physical therapist assistant.
45 In order for the immunity under this subsection to apply,
46 there must be a written agreement between the physical
47 therapist or physical therapist assistant and the clinic pursuant
48 to which the physical therapist or physical therapist assistant
49 will provide voluntary uncompensated physical therapy

50 services under the control of the clinic to patients of the clinic
51 before the rendering of any services by the physical therapist
52 or physical therapist assistant at the clinic: *Provided*, That
53 any clinic entering into such written agreement is required to
54 maintain liability coverage of not less than one million
55 dollars per occurrence.

56 (c) Notwithstanding the provisions of subsection (b) of
57 this section, a clinic organized, in whole or in part, for the
58 delivery of health care services without charge is not relieved
59 from imputed liability for the negligent acts of a physical
60 therapist or physical therapist assistant rendering voluntary
61 physical therapy services at or for the clinic under a special
62 volunteer license authorized under subsection (a) of this
63 section.

64 (d) For purposes of this section, “otherwise eligible for
65 licensure” means the satisfaction of all the requirements for
66 licensure for a physical therapist or physical therapist
67 assistant, as the case may be, as listed in section six of this
68 article and in the legislative rules promulgated thereunder,
69 except the fee requirements of subsection (e) of that section
70 and of the legislative rules promulgated by the board relating
71 to fees.

72 (e) Nothing in this section may be construed as requiring
73 the board to issue a special volunteer license to any physical
74 therapist or physical therapist assistant whose license is or
75 has been subject to any disciplinary action or to any physical
76 therapist or physical therapist assistant who has surrendered
77 a license or caused such license to lapse, expire and become
78 invalid in lieu of having a complaint initiated or other action
79 taken against his or her license, or who has elected to place
80 a license in inactive status in lieu of having a complaint
81 initiated or other action taken against his or her license, or
82 who has been denied a license.

83 (f) Any policy or contract of liability insurance providing
84 coverage for liability sold, issued or delivered in this state to
85 any physical therapist or physical therapist assistant covered
86 under the provisions of this article shall be read so as to
87 contain a provision or endorsement whereby the company
88 issuing such policy waives or agrees not to assert as a defense
89 on behalf of the policyholder or any beneficiary thereof, to
90 any claim covered by the terms of such policy within the
91 policy limits, the immunity from liability of the insured by
92 reason of the care and treatment of needy and indigent
93 patients by a physical therapist or physical therapist assistant
94 who holds a special volunteer license.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-17. Special volunteer psychologists license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer psychologists
2 license for psychologists retired or retiring from the active
3 practice of psychology who wish to donate their expertise for
4 the psychological care and treatment of indigent and needy
5 patients in the clinic setting of clinics organized, in whole or
6 in part, for the delivery of health care services without
7 charge. The special volunteer psychologist license shall be
8 issued by the West Virginia Board of Examiners of
9 Psychologists to psychologists licensed or otherwise eligible
10 for licensure under this article and the legislative rules
11 promulgated hereunder without the payment of an application
12 fee, license fee or renewal fee, and the initial license shall be
13 issued for the remainder of the licensing period, and renewed
14 consistent with the boards other licensing requirements. The
15 board shall develop application forms for the special license
16 provided in this subsection which shall contain the
17 psychologist's acknowledgment that:

18 (1) The psychologist's practice under the special
19 volunteer psychologists license will be exclusively devoted
20 to providing psychological care to needy and indigent
21 persons in West Virginia;

22 (2) The psychologist will not receive any payment or
23 compensation, either direct or indirect, or have the
24 expectation of any payment or compensation, for any
25 psychological services rendered under the special volunteer
26 psychological license;

27 (3) The psychologist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The psychologist agrees to continue to participate in
30 continuing education as required by the board for a special
31 volunteer psychologists license.

32 (b) Any psychologist who renders any psychological
33 service to indigent and needy patients of a clinic organized,
34 in whole or in part, for the delivery of health care services
35 without charge under a special volunteer psychologist license
36 authorized under subsection (a) of this section without
37 payment or compensation or the expectation or promise of
38 payment or compensation, is immune from liability for any
39 civil action arising out of any act or omission resulting from
40 the rendering of the psychological service at the clinic unless
41 the act or omission was the result of the psychologist's gross
42 negligence or willful misconduct. In order for the immunity
43 under this subsection to apply, there must be a written
44 agreement between the psychologist and the clinic pursuant
45 to which the psychologist will provide voluntary
46 uncompensated psychological services under the control of
47 the clinic to patients of the clinic before the rendering of any
48 services by the psychologists at the clinic: *Provided*, That
49 any clinic entering into such written agreement is required to
50 maintain liability coverage of not less than one million
51 dollars per occurrence.

52 (c) Notwithstanding the provisions of subsection (b) of
53 this section, a clinic organized, in whole or in part, for the
54 delivery of health care services without charge is not relieved
55 from imputed liability for the negligent acts of a psychologist
56 rendering voluntary psychological services at or for the clinic
57 under a special volunteer psychological license authorized
58 under subsection (a) of this section.

59 (d) For purposes of this section, “otherwise eligible for
60 licensure” means the satisfaction of all the requirements for
61 licensure as listed in section seven of this article and in the
62 legislative rules promulgated thereunder, except the fee
63 requirements of subsection (d) of that section and of the
64 legislative rules promulgated by the board relating to fees.

65 (e) Nothing in this section may be construed as requiring
66 the board to issue a special volunteer psychologist license to
67 any psychologist whose license is or has been subject to any
68 disciplinary action or to any psychologist who has
69 surrendered a psychologist license or caused such license to
70 lapse, expire and become invalid in lieu of having a
71 complaint initiated or other action taken against his or her
72 license, or who has elected to place a psychologist license in
73 inactive status in lieu of having a complaint initiated or other
74 action taken against his or her license, or who has been
75 denied a psychologist license.

76 (f) Any policy or contract of liability insurance providing
77 coverage for liability sold, issued or delivered in this state to
78 any psychologist covered under the provisions of this article,
79 shall be read so as to contain a provision or endorsement
80 whereby the company issuing such policy waives or agrees
81 not to assert as a defense on behalf of the policyholder or any
82 beneficiary thereof, to any claim covered by the terms of
83 such policy within the policy limits, the immunity from
84 liability of the insured by reason of the care and treatment of
85 needy and indigent patients by a psychologist who holds a
86 special volunteer psychologist license.

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.**§30-28-8a. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.**

1 (a) There is established a special volunteer occupational
2 therapist license for occupational therapists retired or retiring
3 from the active practice of occupational therapy who wish to
4 donate their expertise for the care and treatment of indigent
5 and needy patients in the clinic setting of clinics organized,
6 in whole or in part, for the delivery of health care services
7 without charge. The special volunteer occupational therapist
8 license shall be issued by the West Virginia Board of
9 Occupational Therapy to occupational therapists licensed or
10 otherwise eligible for licensure under this article and the
11 legislative rules promulgated hereunder without the payment
12 of an application fee, license fee or renewal fee, and the
13 initial license shall be issued for the remainder of the
14 licensing period, and renewed consistent with the boards
15 other licensing requirements. The board shall develop
16 application forms for the special license provided in this
17 subsection which shall contain the occupational therapist's
18 acknowledgment that:

19 (1) The occupational therapist's practice under the special
20 volunteer occupational therapist license will be exclusively
21 devoted to providing occupational therapy care to needy and
22 indigent persons in West Virginia;

23 (2) The occupational therapist will not receive any
24 payment or compensation, either direct or indirect, or have
25 the expectation of any payment or compensation, for any
26 occupational therapy services rendered under the special
27 volunteer occupational therapist license;

28 (3) The occupational therapist will supply any supporting
29 documentation that the board may reasonably require; and

30 (4) The occupational therapist agrees to continue to
31 participate in continuing education as required by the board
32 for a special volunteer occupational therapists license.

33 (b) Any occupational therapist who renders any
34 occupational therapy service to indigent and needy patients
35 of a clinic organized, in whole or in part, for the delivery of
36 health care services without charge under a special volunteer
37 occupational therapist license authorized under subsection (a)
38 of this section without payment or compensation or the
39 expectation or promise of payment or compensation is
40 immune from liability for any civil action arising out of any
41 act or omission resulting from the rendering of the
42 occupational therapy service at the clinic unless the act or
43 omission was the result of the occupational therapist's gross
44 negligence or willful misconduct. In order for the immunity
45 under this subsection to apply, there must be a written
46 agreement between the occupational therapist and the clinic
47 pursuant to which the occupational therapist will provide
48 voluntary uncompensated occupational therapy services
49 under the control of the clinic to patients of the clinic before
50 the rendering of any services by the occupational therapist at
51 the clinic: *Provided*, That any clinic entering into such
52 written agreement is required to maintain liability coverage
53 of not less than one million dollars per occurrence.

54 (c) Notwithstanding the provisions of subsection (b) of
55 this section, a clinic organized, in whole or in part, for the
56 delivery of health care services without charge is not relieved
57 from imputed liability for the negligent acts of an
58 occupational therapist rendering voluntary occupational
59 therapy services at or for the clinic under a special volunteer
60 occupational therapist license authorized under subsection (a)
61 of this section.

62 (d) For purposes of this section, “otherwise eligible for
63 licensure” means the satisfaction of all the requirements for
64 licensure as listed in section eight of this article and in the
65 legislative rules promulgated thereunder, excepting the fee
66 requirements of subsection (a), section eleven of this article
67 and of the legislative rules promulgated by the board relating
68 to fees.

69 (e) Nothing in this section may be construed as requiring
70 the board to issue a special volunteer occupational therapist
71 license to any occupational therapist whose occupational
72 therapist license is or has been subject to any disciplinary
73 action or to any occupational therapist who has surrendered
74 an occupational therapist license or caused such license to
75 lapse, expire and become invalid in lieu of having a
76 complaint initiated or other action taken against his or her
77 occupational therapist license, or who has elected to place an
78 occupational therapist license in inactive status in lieu of
79 having a complaint initiated or other action taken against his
80 or her occupational therapist license, or who has been denied
81 an occupational therapist license.

82 (f) Any policy or contract of liability insurance providing
83 coverage for liability sold, issued or delivered in this state to
84 any occupational therapist covered under the provisions of
85 this article shall be read so as to contain a provision or
86 endorsement whereby the company issuing such policy
87 waives or agrees not to assert as a defense on behalf of the
88 policyholder or any beneficiary thereof, to any claim covered
89 by the terms of such policy within the policy limits, the
90 immunity from liability of the insured by reason of the care
91 and treatment of needy and indigent patients by an
92 occupational therapist who holds a special volunteer
93 occupational therapist license.

CHAPTER 160

**(S.B. 317 - By Senators Jenkins, Stollings, Bowman, Prezioso,
Plymale and McKenzie)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to licenses to practice medicine and surgery or podiatry; clarifying the licensing provisions; removing the reciprocity provision; authorizing ten years for an applicant to pass the licensing examination; requiring an applicant who fails the licensing examination three times to appear before the board; establishing the requirements for a restricted license in extraordinary circumstances; and authorizing rule-making authority for a restricted license.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

- 1 (a) The board shall issue a license to practice medicine
- 2 and surgery or to practice podiatry to any individual who is
- 3 qualified to do so in accordance with the provisions of this
- 4 article.

5 (b) For an individual to be licensed to practice medicine
6 and surgery in this state, he or she must meet the following
7 requirements:

8 (1) He or she shall submit an application to the board on
9 a form provided by the board and remit to the board a
10 reasonable fee, the amount of the reasonable fee to be set by
11 the board. The application must, as a minimum, require a
12 sworn and notarized statement that the applicant is of good
13 moral character and that he or she is physically and mentally
14 capable of engaging in the practice of medicine and surgery;

15 (2) He or she must provide evidence of graduation and
16 receipt of the degree of doctor of medicine or its equivalent
17 from a school of medicine, which is approved by the liaison
18 committee on medical education or by the board;

19 (3) He or she must submit evidence to the board of
20 having successfully completed a minimum of one year of
21 graduate clinical training in a program approved by the
22 Accreditation Council for Graduate Medical Education; and

23 (4) He or she must pass an examination approved by the
24 board, which examination can be related to a national
25 standard. The examination shall be in the English language
26 and be designed to ascertain an applicant's fitness to practice
27 medicine and surgery. The board shall before the date of
28 examination determine what will constitute a passing score:
29 *Provided*, That the board, or a majority of it, may accept in
30 lieu of an examination of applicants the certificate of the
31 National Board of Medical Examiners: *Provided, however*,
32 That an applicant is required to attain a passing score on all
33 components or steps of the examination within a period of ten
34 consecutive years: *Provided further*, That an applicant who
35 has failed to successfully complete and pass any one of the
36 three steps of the United States medical licensing
37 examination (USMLE) in three attempts is required to appear

38 before the board for a determination by the board, in its
39 discretion, as to what, if any, further education, evaluation
40 and training is required for further consideration of licensure.
41 The board need not reject a candidate for a nonmaterial
42 technical or administrative error or omission in the
43 application process that is unrelated to the candidate's
44 professional qualifications as long as there is sufficient
45 information available to the board to determine the eligibility
46 of the candidate for licensure.

47 (c) In addition to the requirements of subsection (b) of
48 this section, any individual who has received the degree of
49 doctor of medicine or its equivalent from a school of
50 medicine located outside of the United States, the
51 Commonwealth of Puerto Rico and Canada to be licensed to
52 practice medicine in this state must also meet the following
53 additional requirements and limitations:

54 (1) He or she must be able to demonstrate to the
55 satisfaction of the board his or her ability to communicate in
56 the English language;

57 (2) Before taking a licensure examination, he or she must
58 have fulfilled the requirements of the Educational
59 Commission for Foreign Medical Graduates for certification
60 or he or she must provide evidence of receipt of a passing
61 score on the examination of the Educational Commission for
62 Foreign Medical Graduates: *Provided*, That an applicant
63 who: (i) Is currently fully licensed, excluding any temporary,
64 conditional or restricted license or permit, under the laws of
65 another state, the District of Columbia, Canada or the
66 Commonwealth of Puerto Rico; (ii) has been engaged on a
67 full-time professional basis in the practice of medicine within
68 the state or jurisdiction where the applicant is fully licensed
69 for a period of at least five years; and (iii) is not the subject
70 of any pending disciplinary action by a medical licensing
71 board and has not been the subject of professional discipline

72 by a medical licensing board in any jurisdiction is not
73 required to have a certificate from the Educational
74 Commission for Foreign Medical Graduates;

75 (3) He or she must submit evidence to the board of either:
76 (i) Having successfully completed a minimum of two years
77 of graduate clinical training in a program approved by the
78 Accreditation Council for Graduate Medical Education; or
79 (ii) current certification by a member board of the American
80 Board of Medical Specialties.

81 (d) For an individual to be licensed to practice podiatry
82 in this state, he or she must meet the following requirements:

83 (1) He or she shall submit an application to the board on
84 a form provided by the board and remit to the board a
85 reasonable fee, the amount of the reasonable fee to be set by
86 the board. The application must, as a minimum, require a
87 sworn and notarized statement that the applicant is of good
88 moral character and that he or she is physically and mentally
89 capable of engaging in the practice of podiatric medicine;

90 (2) He or she must provide evidence of graduation and
91 receipt of the degree of doctor of podiatric medicine or its
92 equivalent from a school of podiatric medicine which is
93 approved by the Council of Podiatry Education or by the
94 board;

95 (3) He or she must pass an examination approved by the
96 board, which examination can be related to a national
97 standard. The examination shall be in the English language
98 and be designed to ascertain an applicant's fitness to practice
99 podiatric medicine. The board shall before the date of
100 examination determine what will constitute a passing score:
101 *Provided*, That an applicant is required to attain a passing
102 score on all components or steps of the examination within a

103 period of ten consecutive years: *Provided, however,* That an
104 applicant who has failed to successfully complete and pass
105 any one of the three steps of the National Board of Podiatric
106 Medical Examiners examination in three attempts shall be
107 required to appear before the board for a determination by the
108 board, in its discretion, as to what, if any, further education,
109 evaluation and/or training is required for further
110 consideration of licensure; and

111 (4) He or she must submit evidence to the board of
112 having successfully completed a minimum of one year of
113 graduate clinical training in a program approved by the
114 Council on Podiatric Medical Education or the Colleges of
115 Podiatric Medicine. The board may consider a minimum of
116 two years of graduate podiatric clinical training in the U. S.
117 armed forces or three years' private podiatric clinical
118 experience in lieu of this requirement.

119 (e) Notwithstanding any of the provisions of this article,
120 the board may issue a restricted license to an applicant in
121 extraordinary circumstances under the following conditions:

122 (1) Upon a finding by the board that based on the
123 applicant's exceptional education, training and practice
124 credentials, the applicant's practice in the state would be
125 beneficial to the public welfare;

126 (2) Upon a finding by the board that the applicant's
127 education, training and practice credentials are substantially
128 equivalent to the requirements of licensure established in this
129 article;

130 (3) Upon a finding by the board that the applicant
131 received his or her post-graduate medical training outside of
132 the United States and its territories;

133 (4) That the restricted license issued under extraordinary
134 circumstances is approved by a vote of three fourths of the
135 members of the board;

136 (5) That orders denying applications for a restricted
137 license under this subsection are not appealable; and

138 (6) That the board report to the President of the Senate
139 and the Speaker of the House of Delegates all decisions made
140 pursuant to this subsection and the reasons for those
141 decisions.

142 (f) The board shall propose rules for legislative approval
143 in accordance with the provisions of article three, chapter
144 twenty-nine-a of this code, that establish and regulate the
145 restricted license issued to an applicant in extraordinary
146 circumstances pursuant to the provisions of this section.

147 (g) All licenses to practice medicine and surgery granted
148 prior to the first day of July, two thousand eight, and valid on
149 that date shall continue in full effect for the term and under
150 the conditions provided by law at the time of the granting of
151 the license: *Provided*, That the provisions of subsection (d)
152 of this section do not apply to any person legally entitled to
153 practice chiropody or podiatry in this state prior to the
154 eleventh day of June, one thousand nine hundred sixty-five:
155 *Provided, however*, That all persons licensed to practice
156 chiropody prior to the eleventh day of June, one thousand
157 nine hundred sixty-five, shall be permitted to use the term
158 "chiropody-podiatry" and shall have the rights, privileges and
159 responsibilities of a podiatrist set out in this article.

160 (h) The board may not issue a license to a person not
161 previously licensed in West Virginia whose license has been
162 revoked or suspended in another state until reinstatement of
163 his or her license in that state.

CHAPTER 161

(Com. Sub. for H.B. 4144 - By Delegates Morgan, Martin,
Higgins and Long)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §30-3-16 of the Code of West Virginia, 1931, as amended, relating to physician assistants; updating language to conform to national changes; requiring supervising physicians to be fully licensed without restriction or limitation; permitting graduates of an approved program who have passed the national certifying examination for physician assistants to obtain temporary licenses; requiring a physician assistant who fails a recertifying examination to immediately notify the supervising physician and the Board of Medicine and immediately cease practice and requiring automatic license expiration until passage of the examination; raising fees and adding fees for temporary license and prescriptive writing privileges.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure;

responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Approved program" means an educational program
3 for physician assistants approved and accredited by the
4 Committee on Accreditation of Allied Health Education
5 Programs or its successor;

6 (2) "Health care facility" means any licensed hospital,
7 nursing home, extended care facility, state health or mental
8 institution, clinic or physician's office;

9 (3) "Physician assistant" means an assistant to a physician
10 who is a graduate of an approved program of instruction in
11 primary health care or surgery, has attained a baccalaureate
12 or master's degree, has passed the national certification
13 examination and is qualified to perform direct patient care
14 services under the supervision of a physician;

15 (4) "Physician assistant-midwife" means a physician
16 assistant who meets all qualifications set forth under
17 subdivision (3) of this subsection and fulfills the
18 requirements set forth in subsection (d) of this section, is
19 subject to all provisions of this section and assists in the
20 management and care of a woman and her infant during the
21 prenatal, delivery and postnatal periods; and

22 (5) "Supervising physician" means a doctor or doctors of
23 medicine or podiatry permanently and fully licensed in this
24 state without restriction or limitation who assume legal and
25 supervisory responsibility for the work or training of any
26 physician assistant under his or her supervision.

27 (b) The board shall promulgate rules pursuant to the
28 provisions of article three, chapter twenty-nine-a of this code
29 governing the extent to which physician assistants may
30 function in this state. The rules shall provide that the
31 physician assistant is limited to the performance of those
32 services for which he or she is trained and that he or she
33 performs only under the supervision and control of a
34 physician permanently licensed in this state, but that
35 supervision and control does not require the personal
36 presence of the supervising physician at the place or places
37 where services are rendered if the physician assistant's
38 normal place of employment is on the premises of the
39 supervising physician. The supervising physician may send
40 the physician assistant off the premises to perform duties
41 under his or her direction, but a separate place of work for the
42 physician assistant may not be established. In promulgating
43 the rules, the board shall allow the physician assistant to
44 perform those procedures and examinations and in the case
45 of certain authorized physician assistants to prescribe at the
46 direction of his or her supervising physician in accordance
47 with subsection (r) of this section those categories of drugs
48 submitted to it in the job description required by this section.
49 Certain authorized physician assistants may pronounce death
50 in accordance with the rules proposed by the board which
51 receive legislative approval. The board shall compile and
52 publish an annual report that includes a list of currently
53 licensed physician assistants and their supervising
54 physician(s) and location in the state.

55 (c) The board shall license as a physician assistant any
56 person who files an application together with a proposed job
57 description and furnishes satisfactory evidence to it that he or
58 she has met the following standards:

59 (1) Is a graduate of an approved program of instruction in
60 primary health care or surgery;

61 (2) Has passed the certifying examination for a primary
62 care physician assistant administered by the National
63 Commission on Certification of Physician Assistants and has
64 maintained certification by that commission so as to be
65 currently certified;

66 (3) Is of good moral character; and

67 (4) Has attained a baccalaureate or master's degree.

68 (d) The board shall license as a physician
69 assistant-midwife any person who meets the standards set
70 forth under subsection (c) of this section and, in addition
71 thereto, the following standards:

72 (1) Is a graduate of a school of midwifery accredited by
73 the American college of nurse-midwives;

74 (2) Has passed an examination approved by the board;
75 and

76 (3) Practices midwifery under the supervision of a
77 board-certified obstetrician, gynecologist or a board-certified
78 family practice physician who routinely practices obstetrics.

79 (e) The board may license as a physician assistant any
80 person who files an application together with a proposed job
81 description and furnishes satisfactory evidence that he or she
82 is of good moral character and meets either of the following
83 standards:

84 (1) He or she is a graduate of an approved program of
85 instruction in primary health care or surgery prior to the first
86 day of July, one thousand nine hundred ninety-four, and has
87 passed the certifying examination for a physician assistant
88 administered by the National Commission on Certification of
89 Physician Assistants and has maintained certification by that
90 commission so as to be currently certified; or

91 (2) He or she had been certified by the board as a
92 physician assistant then classified as "Type B" prior to the
93 first day of July, one thousand nine hundred eighty-three.

94 (f) Licensure of an assistant to a physician practicing the
95 specialty of ophthalmology is permitted under this section:
96 *Provided*, That a physician assistant may not dispense a
97 prescription for a refraction.

98 (g) When a graduate of an approved program who has
99 successfully passed the national commission on certification
100 of physician assistants' certifying examination submits an
101 application to the board for a physician assistant license,
102 accompanied by a job description as referenced by this
103 section, and a fifty dollar temporary license fee, and the
104 application is complete, the board shall issue to that applicant
105 a temporary license allowing that applicant to function as a
106 physician assistant.

107 (h) When a graduate of an approved program submits an
108 application to the board for a physician assistant license,
109 accompanied by a job description as referenced by this
110 section, and a fifty dollar temporary license fee, and the
111 application is complete, the board shall issue to that applicant
112 a temporary license allowing that applicant to function as a
113 physician assistant until the applicant successfully passes the
114 national commission on certification of physician assistants'
115 certifying examination: *Provided*, That the applicant shall sit
116 for and obtain a passing score on the examination next
117 offered following graduation from the approved program.

118 (i) No applicant may receive a temporary license who,
119 following graduation from an approved program, has sat for
120 and not obtained a passing score on the examination.

121 (j) A physician assistant who has not been certified by the
122 national commission on certification of physician assistants

123 will be restricted to work under the direct supervision of the
124 supervising physician.

125 (k) A physician assistant who has been issued a
126 temporary license shall, within thirty days of receipt of
127 written notice from the national commission on certification
128 of physician assistants of his or her performance on the
129 certifying examination, notify the board in writing of his or
130 her results. In the event of failure of that examination, the
131 temporary license shall expire and terminate automatically
132 and the board shall so notify the physician assistant in
133 writing.

134 (l) In the event that a physician assistant fails a
135 recertification examination of the National Commission on
136 Certification of Physician Assistants and is no longer
137 certified, the physician assistant shall immediately notify his
138 or her supervising physician or physicians and the board in
139 writing. The physician assistant shall immediately cease
140 practicing, the license shall expire and terminate
141 automatically, and the physician assistant is not eligible for
142 reinstatement until he or she has obtained a passing score on
143 the examination.

144 (m) Any physician applying to the board to supervise a
145 physician assistant shall affirm that the range of medical
146 services set forth in the physician assistant's job description
147 are consistent with the skills and training of the supervising
148 physician and the physician assistant. Before a physician
149 assistant can be employed or otherwise use his or her skills,
150 the supervising physician and the physician assistant must
151 obtain approval of the job description from the board. The
152 board may revoke or suspend any license of an assistant to a
153 physician for cause, after giving that assistant an opportunity
154 to be heard in the manner provided by article five, chapter
155 twenty-nine-a of this code and as set forth in rules duly
156 adopted by the board.

157 (n) The supervising physician is responsible for
158 observing, directing and evaluating the work, records and
159 practices of each physician assistant performing under his or
160 her supervision. He or she shall notify the board in writing
161 of any termination of his or her supervisory relationship with
162 a physician assistant within ten days of the termination. The
163 legal responsibility for any physician assistant remains with
164 the supervising physician at all times, including occasions
165 when the assistant under his or her direction and supervision,
166 aids in the care and treatment of a patient in a health care
167 facility. In his or her absence, a supervising physician must
168 designate an alternate supervising physician, however, the
169 legal responsibility remains with the supervising physician at
170 all times. A health care facility is not legally responsible for
171 the actions or omissions of the physician assistant unless the
172 physician assistant is an employee of the facility.

173 (o) The acts or omissions of a physician assistant
174 employed by health care facilities providing inpatient or
175 outpatient services shall be the legal responsibility of the
176 facilities. Physician assistants employed by facilities in staff
177 positions shall be supervised by a permanently licensed
178 physician.

179 (p) A health care facility shall report in writing to the
180 board within sixty days after the completion of the facility's
181 formal disciplinary procedure, and also after the
182 commencement, and again after the conclusion, of any
183 resulting legal action, the name of any physician assistant
184 practicing in the facility whose privileges at the facility have
185 been revoked, restricted, reduced or terminated for any cause
186 including resignation, together with all pertinent information
187 relating to the action. The health care facility shall also
188 report any other formal disciplinary action taken against any
189 physician assistant by the facility relating to professional
190 ethics, medical incompetence, medical malpractice, moral
191 turpitude or drug or alcohol abuse. Temporary suspension

192 for failure to maintain records on a timely basis or failure to
193 attend staff or section meetings need not be reported.

194 (q) When functioning as a physician assistant, the
195 physician assistant shall wear a name tag that identifies him
196 or her as a physician assistant. A two and one-half by three
197 and one-half inch card of identification shall be furnished by
198 the board upon licensure of the physician assistant.

199 (r) A physician assistant may write or sign prescriptions
200 or transmit prescriptions by word of mouth, telephone or
201 other means of communication at the direction of his or her
202 supervising physician. A fee of fifty dollars will be charged
203 for prescription writing privileges. The board shall
204 promulgate rules pursuant to the provisions of article three,
205 chapter twenty-nine-a of this code governing the eligibility
206 and extent to which a physician assistant may prescribe at the
207 direction of the supervising physician. The rules shall
208 include, but not be limited to, the following:

209 (1) Provisions for approving a state formulary classifying
210 pharmacologic categories of drugs that may be prescribed by
211 a physician assistant:

212 (A) The following categories of drugs shall be excluded
213 from the formulary: Schedules I and II of the Uniform
214 Controlled Substances Act, anticoagulants, antineoplastic,
215 radiopharmaceuticals, general anesthetics and radiographic
216 contrast materials;

217 (B) Drugs listed under Schedule III shall be limited to a
218 72-hour supply without refill; and

219 (C) Categories of other drugs may be excluded as
220 determined by the board.

221 (2) All pharmacological categories of drugs to be
222 prescribed by a physician assistant shall be listed in each job

223 description submitted to the board as required in subsection
224 (i) of this section;

225 (3) The maximum dosage a physician assistant may
226 prescribe;

227 (4) A requirement that to be eligible for prescription
228 privileges, a physician assistant shall have performed patient
229 care services for a minimum of two years immediately
230 preceding the submission to the board of the job description
231 containing prescription privileges and shall have successfully
232 completed an accredited course of instruction in clinical
233 pharmacology approved by the board; and

234 (5) A requirement that to maintain prescription privileges,
235 a physician assistant shall continue to maintain National
236 Certification as a Physician Assistant and, in meeting the
237 national certification requirements, shall complete a
238 minimum of ten hours of continuing education in rational
239 drug therapy in each certification period. Nothing in this
240 subsection shall be construed to permit a physician assistant
241 to independently prescribe or dispense drugs.

242 (s) A supervising physician may not supervise at any one
243 time more than three full-time physician assistants or their
244 equivalent, except that a physician may supervise up to four
245 hospital-employed physician assistants. No physician shall
246 supervise more than four physician assistants at any one time.

247 (t) A physician assistant may not sign any prescription,
248 except in the case of an authorized physician assistant at the
249 direction of his or her supervising physician in accordance
250 with the provisions of subsection (r) of this section. A
251 physician assistant may not perform any service that his or
252 her supervising physician is not qualified to perform. A
253 physician assistant may not perform any service that is not
254 included in his or her job description and approved by the
255 board as provided for in this section.

256 (u) The provisions of this section do not authorize any
257 physician assistant to perform any specific function or duty
258 delegated by this code to those persons licensed as
259 chiropractors, dentists, dental hygienists, optometrists or
260 pharmacists or certified as nurse anesthetists.

261 (v) Each application for licensure submitted by a
262 licensed supervising physician under this section is to be
263 accompanied by a fee of two hundred dollars. A fee of one
264 hundred dollars is to be charged for the biennial renewal of
265 the license. A fee of fifty dollars is to be charged for any
266 change or addition of supervising physician, or change or
267 addition of job location. A fee of fifty dollars will be charged
268 for prescriptive writing privileges.

269 (w) As a condition of renewal of physician assistant
270 license, each physician assistant shall provide written
271 documentation of participation in and successful completion
272 during the preceding two-year period of continuing
273 education, in the number of hours specified by the board by
274 rule, designated as Category I by the American Medical
275 Association, American Academy of Physician Assistants or
276 the Academy of Family Physicians and continuing education,
277 in the number of hours specified by the board by rule,
278 designated as Category II by the association or either
279 academy.

280 (x) Notwithstanding any provision of this chapter to the
281 contrary, failure to timely submit the required written
282 documentation shall result in the automatic expiration of any
283 license as a physician assistant until the written
284 documentation is submitted to and approved by the board.

285 (y) If a license is automatically expired and reinstatement
286 is sought within one year of the automatic expiration, the
287 former licensee shall:

288 (1) Provide certification with supporting written
289 documentation of the successful completion of the required
290 continuing education;

291 (2) Pay a renewal fee; and

292 (3) Pay a reinstatement fee equal to fifty percent of the
293 renewal fee.

294 (z) If a license is automatically expired and more than
295 one year has passed since the automatic expiration, the
296 former licensee shall:

297 (1) Apply for a new license;

298 (2) Provide certification with supporting written
299 documentation of the successful completion of the required
300 continuing education; and

301 (3) Pay such fees as determined by the board.

302 (aa) It is unlawful for any physician assistant to represent
303 to any person that he or she is a physician, surgeon or
304 podiatrist. Any person who violates the provisions of this
305 subsection is guilty of a felony and, upon conviction thereof,
306 shall be imprisoned in a state correctional facility for not less
307 than one nor more than two years, or be fined not more than
308 two thousand dollars, or both fined and imprisoned.

309 (bb) All physician assistants holding valid certificates
310 issued by the board prior to the first day of July, one
311 thousand nine hundred ninety-two, shall be considered to be
312 licensed under this section.

CHAPTER 162

(Com. Sub. for S.B. 13 - By Senator Bailey)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Dental Practice Act; clarifying definitions, powers of the board, rulemaking and temporary permits; authorizing Board of Dental Examiners to promulgate rules allowing dental hygienists to practice in public health settings under different degrees of supervision; providing method of service that a copy of a complaint against a dentist or dental hygienist to a dentist or dental hygienist be established by board rule; establishing a special volunteer dental license; and providing civil immunity.

Be it enacted by the Legislature of West Virginia:

That §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

- §30-4-3. Definitions.
- §30-4-5. Powers of the board.
- §30-4-6. Rule-making authority.
- §30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.
- §30-4-14. Temporary permits; teaching permit; dental hygienist.
- §30-4-15. Scope of practice; dentist.
- §30-4-21. Complaints; investigations.

§30-4-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (1) “Approved dental hygiene program” means a program
5 that is approved by the board and is accredited or its
6 educational standards are deemed by the board to be
7 substantially equivalent to those required by the Commission
8 on Dental Accreditation of the American Dental Association.

9 (2) “Approved dental school, college or dental
10 department of a university” means a dental school, college or
11 dental department of a university that is approved by the
12 board and is accredited or its educational standards are
13 deemed by the board to be substantially equivalent to those
14 required by the Commission on Dental Accreditation of the
15 American Dental Association.

16 (3) “Authorize” means that the dentist is giving
17 permission or approval to dental auxiliary personnel to
18 perform delegated procedures in accordance with the
19 dentist’s diagnosis and treatment plan.

20 (4) “Board” means the West Virginia Board of Dental
21 Examiners.

22 (5) “Certificate of qualification” means a certificate
23 authorizing a dentist to practice a specialty.

24 (6) “Delegated procedures” means those procedures
25 specified by law or by rule of the board and performed by
26 dental auxiliary personnel under the supervision of a licensed
27 dentist.

28 (7) “Dental assistant” means a person qualified by
29 education, training and experience who aids or assists a

30 dentist in the delivery of patient care in accordance with
31 delegated procedures or who may perform nonclinical duties
32 in the dental office: *Provided*, That no occupational title other
33 than dental assistant shall be used to describe this auxiliary.

34 (8) “Dental auxiliary personnel” or “auxiliary” means
35 dental hygienists and dental assistants who assist the dentist
36 in the provision of oral health care services to patients.

37 (9) “Dental hygienist” means a person licensed by the
38 board who provides preventative oral health care services to
39 patients in the dental office and in a public health setting:
40 *Provided*, That no occupational title other than dental
41 hygienist may be used to describe this auxiliary.

42 (10) “Dental laboratory” means a dental laboratory as
43 defined in section one, article four-b of this chapter.

44 (11) “Dental office” means the place where the licensed
45 dentist and dental auxiliary personnel are practicing dentistry.

46 (12) “Dental prosthesis” means an artificial appliance
47 fabricated to replace one or more teeth or other oral or
48 peri-oral structure in order to restore or alter function or
49 aesthetics.

50 (13) “Dentist” means an individual licensed by the board
51 to practice dentistry.

52 (14) “Dentistry” means the evaluation, diagnosis,
53 prevention and treatment of diseases, disorders and
54 conditions of the oral cavity, maxillofacial area and the
55 adjacent and associated structures provided by a dentist.

56 (15) “Direct supervision” means supervision of dental
57 auxiliary personnel provided by a licensed dentist who is
58 physically present in the dental office or treatment facility
59 when procedures are being performed.

60 (16) “General supervision” means a dentist is not
61 required to be in the office or treatment facility when
62 procedures are being performed by the auxiliary dental
63 personnel, but has personally diagnosed the condition to be
64 treated, has personally authorized the procedures and will
65 evaluate the treatment provided by the dental auxiliary
66 personnel.

67 (17) “Good moral character” means a lack of history of
68 dishonesty.

69 (18) “License” means a license to practice dentistry or
70 dental hygiene.

71 (19) “Licensee” means a person holding a license.

72 (20) “Public health practice” means treatment or
73 procedures in a public health setting which shall be
74 designated by a rule promulgated by the Board of Dental
75 Examiners to require direct, general or no supervision of a
76 dental hygienist by a licensed dentist.

77 (21) “Public health setting” means hospitals, schools,
78 correctional facilities, jails, community clinics, long-term
79 care facilities, nursing homes, home health agencies, group
80 homes, state institutions under the West Virginia Department
81 of Health and Human Resources, public health facilities,
82 homebound settings, accredited dental hygiene education
83 programs and any other place designated by the board by
84 rule.

85 (22) “Specialty” means the practice of a certain branch of
86 dentistry.

§30-4-5. Powers of the board.

1 The board has all the powers set forth in article one of
2 this chapter and in addition may:

3 (1) Sue and be sued in its official name as an agency of
4 this state;

5 (2) Hire, fix the compensation of and discharge the
6 employees necessary to enforce the provisions of this article;

7 (3) Examine and determine the qualifications of any
8 applicant for a license;

9 (4) Examine and determine the qualifications of any
10 applicant for a certificate of qualification;

11 (5) Issue, renew, deny, suspend, revoke, limit or reinstate
12 licenses and discipline licensees;

13 (6) Issue, renew, deny, suspend, revoke, limit or reinstate
14 certificates of qualification and discipline holders of a
15 certificate of qualification;

16 (7) Investigate alleged violations of the provisions of this
17 article and article four-b of this chapter reasonable
18 regulations promulgated hereunder and orders and final
19 decisions of the board;

20 (8) Conduct hearings upon charges calling for discipline
21 of a licensee or revocation or suspension of a license;

22 (9) Propose rules in accordance with the provisions of
23 article three, chapter twenty-nine-a of this code to implement
24 the provisions of this article; and

25 (10) Take all other actions necessary and proper to
26 effectuate the purposes of this article.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter

3 twenty-nine-a of this code to implement the provisions of this
4 article including, but not limited to, the following:

5 (1) The examinations administered under this article;

6 (2) Issuing and renewing a license;

7 (3) Issuing temporary permits, teaching permits and
8 dental intern or resident permits;

9 (4) Specialities that a dentist may practice;

10 (5) Issuing and renewing a certificate of qualification;

11 (6) Denying, suspending, revoking, reinstating or limiting
12 the practice of a licensee or certificate of qualification;

13 (7) Continuing education requirements for licensees;

14 (8) Delegated procedures to be performed by a dental
15 hygienist;

16 (9) Designating the services and procedures requiring or
17 allowing direct supervision, general supervision and public
18 health practice to be completed and filed as an emergency
19 rule no later than the first day of July, two thousand eight;

20 (10) Delegated procedures to be performed by a dental
21 assistant;

22 (11) Use of firm or trade names;

23 (12) Dental corporations; and

24 (13) Professional conduct requirements.

25 (b) All rules in effect on the effective date of this article
26 shall remain in effect until they are withdrawn, revoked or
27 amended.

§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.

1 (a) The board may issue a temporary permit to practice
2 dentistry to an applicant who:

3 (1) Has graduated from an approved dental college,
4 school or dental department of a university with a degree in
5 dentistry;

6 (2) Has been offered employment under the direct
7 supervision of a licensed dentist;

8 (3) Has paid the application fee specified by rule; and

9 (4) Meets the other qualifications specified by rule by the
10 board in accordance with the provisions of this article.

11 (b) A temporary permit to practice dentistry may not be
12 renewed and expires on the earlier of:

13 (1) The date the dentist ceases to be under the direct
14 supervision of a licensed dentist; or

15 (2) Sixty days after issuance.

16 (c) The board shall issue a dental intern or dental resident
17 permit to an applicant who meets the qualifications set forth
18 in subdivisions (1), (3) and (4), subsection (a) of this section
19 and who has been accepted as a dental intern or dental
20 resident by a licensed hospital or dental school in this state
21 which maintains an established dental department under the
22 supervision of a licensed dentist.

23 (d) The dental intern or dental resident permit may be
24 renewed and expires on the earlier of:

25 (1) The date the permit holder ceases to be a dental intern
26 or dental resident; or

27 (2) One year after the date of issue.

28 (e) The board shall issue a teaching permit to an applicant
29 who meets the qualifications set forth in subdivisions (1), (3)
30 and (4), subsection (a) of this section and who has been
31 certified by the dean of a dental school located in this state to
32 be a member of the teaching staff of the dental school.

33 (f) A teaching permit is valid for one year from the date
34 of issue and may be renewed.

35 (g) While in effect, a temporary permit to practice
36 dentistry, a permit to practice as a dental intern or dental
37 resident and a teaching permit are subject to the restrictions
38 and requirements imposed by this article. In addition, the
39 holder of a permit to practice as a dental intern or dental
40 resident may not receive any fee for service other than a
41 salary paid by the hospital or dental school and the holder of
42 a teaching permit may only practice dentistry within the
43 facilities of the dental school.

**§30-4-14. Temporary permits; teaching permit; dental
hygienist.**

1 (a) The board may issue a temporary permit to practice
2 dental hygiene to an applicant who:

3 (1) Has graduated from an approved dental hygiene
4 program of a college, school or dental department of a
5 university with a degree in dental hygiene;

6 (2) Has been offered employment as a dental hygienist;

7 (3) Has paid the application fee specified by rule; and

8 (4) Meets the other qualifications specified by rule by the
9 board, in accordance with the provisions of this article.

10 (b) A temporary permit to practice dental hygiene shall
11 not be renewed and expires on the earlier of:

12 (i) The date the dental hygienist ceases to be employed;
13 or

14 (ii) Sixty days after issuance.

15 (c) The board may issue a teaching permit to an applicant
16 who meets the qualifications set forth in subdivisions (1), (3)
17 and (4), subsection (a) of this section and who has been
18 certified by the dean of a dental school located in this state to
19 be a member of the teaching staff of the dental school.

20 (d) A teaching permit is valid for one year from the date
21 of issue and may be renewed.

22 (e) While in effect, a temporary permit to practice dental
23 hygiene and a teaching permit are subject to the restrictions
24 and requirements imposed by this article. In addition, the
25 holder of a teaching permit may only practice dental hygiene
26 within the facilities of the dental school.

§30-4-15. Scope of practice; dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinating dental services to meet the oral health
3 needs of the patient;

4 (2) Examining, evaluating and diagnosing diseases,
5 disorders and conditions of the oral cavity, maxillofacial area
6 and adjacent and associated structures;

7 (3) Treating diseases, disorders and conditions of the oral
8 cavity, maxillofacial area and the adjacent and associated
9 structures;

10 (4) Providing services to prevent diseases, disorders and
11 conditions of the oral cavity, maxillofacial area and the
12 adjacent and associated structures;

13 (5) Fabricating, repairing or altering a dental prosthesis;

14 (6) Administering anesthesia in accordance with the
15 provisions of article four-a of this chapter;

16 (7) Prescribing drugs necessary for the practice of
17 dentistry;

18 (8) Executing and signing a death certificate when it is
19 required in the practice of dentistry;

20 (9) Employing and supervising dental auxiliary
21 personnel;

22 (10) Authorizing delegated procedures to be performed
23 by dental auxiliary personnel; and

24 (11) Performing any other work included in the
25 curriculum of an approved dental school, college or dental
26 department of a university.

§30-4-21. Complaints; investigations.

1 (a) Upon receipt of a written complaint filed against any
2 dentist or dental hygienist, the board shall provide a copy of
3 the complaint to the dentist or dental hygienist as specified by
4 legislative rule promulgated by the board.

5 (b) The board may investigate the complaint. If the board
6 finds upon investigation that probable cause exists that the

7 dentist or dental hygienist has violated any provision of this
8 article or the rules, the board shall serve the dentist or dental
9 hygienist with a written statement of charges and a notice
10 specifying the date, time and place of hearing. The hearing
11 shall be held in accordance with section twenty-two of this
12 article.

CHAPTER 163

(S.B. 722 - By Senators Prezioso and Unger)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §30-5-1b, §30-5-3, §30-5-14 and §30-5-21 of the Code of West Virginia, 1931, as amended, all relating to regulation by the Board of Pharmacy of ambulatory health care facilities and free clinics who dispense pharmaceuticals; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b, §30-5-3, §30-5-14 and §30-5-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

§30-5-21. Limitations of article.

§30-5-1b. Definitions.

1 The following words and phrases, as used in this article,
2 have the following meanings, unless the context otherwise
3 requires:

4 (1) "Administer" means the direct application of a drug
5 to the body of a patient or research subject by injection,
6 inhalation, ingestion or any other means.

7 (2) "Board of Pharmacy" or "board" means the West
8 Virginia State Board of Pharmacy.

9 (3) "Charitable clinic pharmacy" means a clinic or
10 facility organized as a not-for-profit corporation that offers
11 pharmaceutical care and dispenses prescriptions free of
12 charge to appropriately screened and qualified indigent
13 patients. The Board of Pharmacy shall promulgate rules
14 regarding the minimum standards for a charitable clinic
15 pharmacy and rules regarding the applicable definition of a
16 pharmacist-in-charge, who may be a volunteer, at charitable
17 clinic pharmacies: *Provided*, That the charitable clinic
18 pharmacies shall be exempt from licensure by the board until
19 rules are in effect for a charitable clinic pharmacy. A
20 charitable clinic pharmacy may not be charged any applicable
21 licensing fees and such clinics may receive donated drugs.

22 (4) "Collaborative pharmacy practice" is that practice of
23 pharmacy where one or more pharmacists have jointly
24 agreed, on a voluntary basis, to work in conjunction with one
25 or more physicians under written protocol where the
26 pharmacist or pharmacists may perform certain patient care
27 functions authorized by the physician or physicians under
28 certain specified conditions and limitations.

29 (5) "Collaborative pharmacy practice agreement" is a
30 written and signed agreement between a pharmacist, a

31 physician and the individual patient, or the patient's
32 authorized representative who has granted his or her
33 informed consent, that provides for collaborative pharmacy
34 practice for the purpose of drug therapy management of a
35 patient, which has been approved by the Board of Pharmacy,
36 the Board of Medicine in the case of an allopathic physician
37 or the West Virginia Board of Osteopathy in the case of an
38 osteopathic physician.

39 (6) "Compounding" means:

40 (A) The preparation, mixing, assembling, packaging or
41 labeling of a drug or device:

42 (i) As the result of a practitioner's prescription drug order
43 or initiative based on the practitioner/patient/pharmacist
44 relationship in the course of professional practice for sale or
45 dispensing; or

46 (ii) For the purpose of, or as an incident to, research,
47 teaching or chemical analysis and not for sale or dispensing;
48 and

49 (B) The preparation of drugs or devices in anticipation of
50 prescription drug orders based on routine, regularly observed
51 prescribing patterns.

52 (7) "Confidential information" means information
53 maintained by the pharmacist in the patient record or which
54 is communicated to the patient as part of patient counseling
55 or which is communicated by the patient to the pharmacist.
56 This information is privileged and may be released only to
57 the patient or to other members of the health care team and
58 other pharmacists where, in the pharmacists' professional
59 judgment, the release is necessary to the patient's health and
60 well-being; to health plans, as that term is defined in 45 CFR
61 §160.103, for payment; to other persons or governmental

62 agencies authorized by law to receive the privileged
63 information; as necessary for the limited purpose of peer
64 review and utilization review; as authorized by the patient or
65 required by court order. Appropriate disclosure, as permitted
66 by this section, may occur by the pharmacist either directly
67 or through an electronic data intermediary, as defined in
68 subdivision (14) of this section.

69 (8) "Deliver" or "delivery" means the actual, constructive
70 or attempted transfer of a drug or device from one person to
71 another, whether or not for a consideration.

72 (9) "Device" means an instrument, apparatus, implement
73 or machine, contrivance, implant or other similar or related
74 article, including any component part or accessory, which is
75 required under federal law to bear the label, "Caution:
76 Federal or state law requires dispensing by or on the order of
77 a physician."

78 (10) "Dispense" or "dispensing" means the preparation
79 and delivery of a drug or device in an appropriately labeled
80 and suitable container to a patient or patient's representative
81 or surrogate pursuant to a lawful order of a practitioner for
82 subsequent administration to, or use by, a patient.

83 (11) "Distribute" means the delivery of a drug or device
84 other than by administering or dispensing.

85 (12) "Drug" means:

86 (A) Articles recognized as drugs in the USP-DI, facts and
87 comparisons, physician's desk reference or supplements
88 thereto for use in the diagnosis, cure, mitigation, treatment or
89 prevention of disease in human or other animals;

90 (B) Articles, other than food, intended to affect the
91 structure or any function of the body of human or other
92 animals; and

93 (C) Articles intended for use as a component of any
94 articles specified in paragraph (A) or (B) of this subdivision.

95 (13) "Drug regimen review" includes, but is not limited
96 to, the following activities:

97 (A) Evaluation of the prescription drug orders and patient
98 records for:

99 (i) Known allergies;

100 (ii) Rational therapy-contraindications;

101 (iii) Reasonable dose and route of administration; and

102 (iv) Reasonable directions for use.

103 (B) Evaluation of the prescription drug orders and patient
104 records for duplication of therapy.

105 (C) Evaluation of the prescription drug for interactions
106 and/or adverse effects which may include, but are not limited
107 to, any of the following:

108 (i) Drug-drug;

109 (ii) Drug-food;

110 (iii) Drug-disease; and

111 (iv) Adverse drug reactions.

112 (D) Evaluation of the prescription drug orders and patient
113 records for proper use, including overuse and underuse and
114 optimum therapeutic outcomes.

115 (14) "Drug therapy management" means the review of
116 drug therapy regimens of patients by a pharmacist for the

117 purpose of evaluating and rendering advice to a physician
118 regarding adjustment of the regimen in accordance with the
119 collaborative pharmacy practice agreement. Decisions
120 involving drug therapy management shall be made in the best
121 interest of the patient. Drug therapy management shall be
122 limited to:

123 (A) Implementing, modifying and managing drug therapy
124 according to the terms of the collaborative pharmacy practice
125 agreement;

126 (B) Collecting and reviewing patient histories;

127 (C) Obtaining and checking vital signs, including pulse,
128 temperature, blood pressure and respiration;

129 (D) Ordering screening laboratory tests that are dose
130 related and specific to the patient's medication or are protocol
131 driven and are also specifically set out in the collaborative
132 pharmacy practice agreement between the pharmacist and
133 physician.

134 (15) "Electronic data intermediary" means an entity that
135 provides the infrastructure to connect a computer system,
136 hand-held electronic device or other electronic device used
137 by a prescribing practitioner with a computer system or other
138 electronic device used by a pharmacist to facilitate the secure
139 transmission of:

140 (A) An electronic prescription order;

141 (B) A refill authorization request;

142 (C) A communication; or

143 (D) Other patient care information.

144 (16) "E-prescribing" means the transmission, using
145 electronic media, of prescription or prescription-related
146 information between a practitioner, pharmacist, pharmacy
147 benefit manager or health plan as defined in 45 CFR
148 §160.103, either directly or through an electronic data
149 intermediary. E-prescribing includes, but is not limited to,
150 two-way transmissions between the point of care and the
151 pharmacist. E-prescribing may also be referenced by the
152 terms "electronic prescription" or "electronic order".

153 (17) "Intern" means an individual who is:

154 (A) Currently registered by this state to engage in the
155 practice of pharmacy while under the supervision of a
156 licensed pharmacist and is satisfactorily progressing toward
157 meeting the requirements for licensure as a pharmacist; or

158 (B) A graduate of an approved college of pharmacy or a
159 graduate who has established educational equivalency by
160 obtaining a foreign pharmacy graduate examination
161 committee (FPGEC) certificate who is currently licensed by
162 the board for the purpose of obtaining practical experience as
163 a requirement for licensure as a pharmacist; or

164 (C) A qualified applicant awaiting examination for
165 licensure; or

166 (D) An individual participating in a residency or
167 fellowship program.

168 (18) "Labeling" means the process of preparing and
169 affixing a label to a drug container exclusive, however, of a
170 labeling by a manufacturer, packer or distributor of a
171 nonprescription drug or commercially packaged legend drug
172 or device. Any label shall include all information required by
173 federal law or regulation and state law or rule.

174 (19) "Mail-order pharmacy" means a pharmacy,
175 regardless of its location, which dispenses greater than ten
176 percent prescription drugs via the mail.

177 (20) "Manufacturer" means a person engaged in the
178 manufacture of drugs or devices.

179 (21) "Manufacturing" means the production, preparation,
180 propagation or processing of a drug or device, either directly
181 or indirectly, by extraction from substances of natural origin
182 or independently by means of chemical or biological
183 synthesis and includes any packaging or repackaging of the
184 substance or substances or labeling or relabeling of its
185 contents and the promotion and marketing of the drugs or
186 devices. Manufacturing also includes the preparation and
187 promotion of commercially available products from bulk
188 compounds for resale by pharmacies, practitioners or other
189 persons.

190 (22) "Nonprescription drug" means a drug which may be
191 sold without a prescription and which is labeled for use by
192 the consumer in accordance with the requirements of the laws
193 and rules of this state and the federal government.

194 (23) "Patient counseling" means the oral communication
195 by the pharmacist of information, as defined in the rules of
196 the board, to the patient to improve therapy by aiding in the
197 proper use of drugs and devices.

198 (24) "Person" means an individual, corporation,
199 partnership, association or any other legal entity, including
200 government.

201 (25) "Pharmaceutical care" is the provision of drug
202 therapy and other pharmaceutical patient care services
203 intended to achieve outcomes related to the cure or
204 prevention of a disease, elimination or reduction of a patient's

205 symptoms or arresting or slowing of a disease process as
206 defined in the rules of the board.

207 (26) "Pharmacist" or "registered pharmacist" means an
208 individual currently licensed by this state to engage in the
209 practice of pharmacy and pharmaceutical care.

210 (27) "Pharmacist-in-charge" means a pharmacist
211 currently licensed in this state who accepts responsibility for
212 the operation of a pharmacy in conformance with all laws and
213 rules pertinent to the practice of pharmacy and the
214 distribution of drugs and who is personally in full and actual
215 charge of the pharmacy and personnel.

216 (28) "Pharmacist's scope of practice pursuant to the
217 collaborative pharmacy practice agreement" means those
218 duties and limitations of duties placed upon the pharmacist
219 by the collaborating physician, as jointly approved by the
220 Board of Pharmacy and the Board of Medicine or the Board
221 of Osteopathy.

222 (29) "Pharmacy" means any drugstore, apothecary or
223 place within this state where drugs are dispensed and sold at
224 retail or displayed for sale at retail and pharmaceutical care
225 is provided and any place outside of this state where drugs
226 are dispensed and pharmaceutical care is provided to
227 residents of this state.

228 (30) "Physician" means an individual currently licensed,
229 in good standing and without restrictions, as an allopathic
230 physician by the West Virginia Board of Medicine or an
231 osteopathic physician by the West Virginia Board of
232 Osteopathy.

233 (31) "Pharmacy technician" means registered supportive
234 personnel who work under the direct supervision of a
235 pharmacist who have passed an approved training program as
236 described in this article.

237 (32) "Practitioner" means an individual currently
238 licensed, registered or otherwise authorized by any state,
239 territory or district of the United States to prescribe and
240 administer drugs in the course of professional practices,
241 including allopathic and osteopathic physicians, dentists,
242 physician assistants, optometrists, veterinarians, podiatrists
243 and nurse practitioners as allowed by law.

244 (33) "Preceptor" means an individual who is currently
245 licensed as a pharmacist by the board, meets the
246 qualifications as a preceptor under the rules of the board and
247 participates in the instructional training of pharmacy interns.

248 (34) "Prescription drug" or "legend drug" means a drug
249 which, under federal law, is required, prior to being
250 dispensed or delivered, to be labeled with either of the
251 following statements:

252 (A) "Caution: Federal law prohibits dispensing without
253 prescription"; or

254 (B) "Caution: Federal law restricts this drug to use by, or
255 on the order of, a licensed veterinarian"; or a drug which is
256 required by any applicable federal or state law or rule to be
257 dispensed pursuant only to a prescription drug order or is
258 restricted to use by practitioners only.

259 (35) "Prescription drug order" means a lawful order of a
260 practitioner for a drug or device for a specific patient.

261 (36) "Prospective drug use review" means a review of the
262 patient's drug therapy and prescription drug order, as defined
263 in the rules of the board, prior to dispensing the drug as part
264 of a drug regimen review.

265 (37) "USP-DI" means the United States pharmacopeia-
266 dispensing information.

267 (38) "Wholesale distributor" means any person engaged
268 in wholesale distribution of drugs, including, but not limited
269 to, manufacturers' and distributors' warehouses, chain drug
270 warehouses and wholesale drug warehouses, independent
271 wholesale drug trader and retail pharmacies that conduct
272 wholesale distributions.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

1 (a) It is unlawful for any person not a pharmacist, or who
2 does not employ a pharmacist, to conduct any pharmacy or
3 store for the purpose of retailing, compounding or dispensing
4 prescription drugs or prescription devices.

5 (b) It is unlawful for the proprietor of any store or
6 pharmacy, any ambulatory health care facility, as that term is
7 defined in section one, article five-b, chapter sixteen of this
8 code, that offers pharmaceutical care, or a facility operated to
9 provide health care or mental health care services free of
10 charge or at a reduced rate and that operates a charitable
11 clinic pharmacy to permit any person not a pharmacist to
12 compound or dispense prescriptions or prescription refills or
13 to retail or dispense the poisons and narcotic drugs named in
14 sections two, three and six, article eight, chapter sixteen of
15 this code: *Provided*, That a licensed intern may compound
16 and dispense prescriptions or prescription refills under the
17 direct supervision of a pharmacist: *Provided, however*, That
18 registered pharmacy technicians may assist in the preparation
19 and dispensing of prescriptions or prescription refills,
20 including, but not limited to, reconstitution of liquid
21 medications, typing and affixing labels under the direct
22 supervision of a licensed pharmacist.

23 (c) It is the duty of a pharmacist or employer who
24 employs an intern to license the intern with the board within
25 ninety days after employment. The board shall furnish
26 proper forms for this purpose and shall issue a certificate to
27 the intern upon licensure.

28 (d) The experience requirement for licensure as a
29 pharmacist shall be computed from the date certified by the
30 supervising pharmacist as the date of entering the internship.
31 If the internship is not registered with the Board of
32 Pharmacy, then the intern shall receive no credit for such
33 experience when he or she makes application for examination
34 for licensure as a pharmacist: *Provided*, That credit may be
35 given for such unregistered experience if an appeal is made
36 and evidence produced showing experience was obtained but
37 not registered and that failure to register the internship
38 experience was not the fault of the intern.

39 (e) An intern having served part or all of his or her
40 internship in a pharmacy in another state or foreign country
41 shall be given credit for the same when the affidavit of his or
42 her internship is signed by the pharmacist under whom he or
43 she served, and it shows the dates and number of hours
44 served in the internship and when the affidavit is attested by
45 the secretary of the state Board of Pharmacy of the state or
46 country where the internship was served.

47 (f) Up to one third of the experience requirement for
48 licensure as a pharmacist may be fulfilled by an internship in
49 a foreign country.

50 (g) No pharmacist may compound or dispense any
51 prescription order when he or she has knowledge that the
52 prescription was issued by a practitioner without establishing
53 an ongoing practitioner-patient relationship. An online or
54 telephonic evaluation by questionnaire is inadequate to
55 establish an appropriate practitioner-patient relationship:
56 *Provided*, That this prohibition does not apply:

- 57 (1) In a documented emergency;
- 58 (2) In an on-call or cross-coverage situation; or
- 59 (3) Where patient care is rendered in consultation with
60 another practitioner who has an ongoing relationship with the
61 patient and who has agreed to supervise the patient's
62 treatment, including the use of any prescribed medications.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

1 (a) The Board of Pharmacy shall require and provide for
2 the annual registration of every pharmacy doing business in
3 this state, including an ambulatory health care facility, as that
4 term is defined in section one, article five-b, chapter sixteen
5 of this code, who offers pharmaceutical care, and a facility
6 operated to provide health care or mental health care services
7 free of charge or at a reduced rate and who operates
8 charitable clinic pharmacy. Any person, firm, corporation or
9 partnership desiring to operate, maintain, open or establish a
10 pharmacy in this state shall apply to the Board of Pharmacy
11 for a permit to do so. The application for such permit shall
12 be made on a form prescribed and furnished by the Board of
13 Pharmacy, which, when properly executed, shall indicate the
14 owner, manager, trustee, lessee, receiver or other person or
15 persons desiring such permit, as well as the location of such
16 pharmacy, including street and number, and any other
17 information as the Board of Pharmacy may require. If it is
18 desired to operate, maintain, open or establish more than one
19 pharmacy, separate application shall be made and separate
20 permits or licenses shall be issued for each.

21 (b) Every initial application for a permit shall be
22 accompanied by the required fee of one hundred fifty dollars.
23 The fee for renewal of such permit or license shall be one
24 hundred dollars annually.

25 (c) If an application is approved, the Secretary of the
26 Board of Pharmacy shall issue to the applicant a permit or
27 license for each pharmacy for which application is made.
28 Permits or licenses issued under this section shall not be
29 transferable and shall expire on the thirtieth day of June of
30 each calendar year and if application for renewal of permit or
31 license is not made on or before that date, or a new one
32 granted on or before the first day of August, following, the
33 old permit or license shall lapse and become null and void
34 and shall require an inspection of the pharmacy and a fee of
35 one hundred fifty dollars plus one hundred fifty dollars for
36 the inspection.

37 (d) Every place of business so registered shall employ a
38 pharmacist in charge and operate in compliance with the
39 general provisions governing the practice of pharmacy and
40 the operation of a pharmacy.

41 (e) The provisions of this section shall have no
42 application to the sale of nonprescription drugs which are not
43 required to be dispensed pursuant to a practitioner's
44 prescription.

§30-5-21. Limitations of article.

1 (a) Nothing in this article shall be construed to prevent,
2 restrict or in any manner interfere with the sale of
3 nonnarcotic nonprescription drugs which may be lawfully
4 sold without a prescription in accordance with the United
5 States Food, Drug and Cosmetic Act or the laws of this state,
6 nor shall any rule be adopted by the board which shall require
7 the sale of nonprescription drugs by a licensed pharmacist or
8 in a pharmacy or which shall prevent, restrict or otherwise
9 interfere with the sale or distribution of such drugs by any
10 retail merchant. The sale or distribution of nonprescription
11 drugs shall not be deemed to be improperly engaging in the
12 practice of pharmacy.

13 (b) Nothing in this article shall be construed to interfere
14 with any legally qualified practitioner of medicine, dentistry
15 or veterinary medicine, who is not the proprietor of the store
16 for the dispensing or retailing of drugs and who is not in the
17 employ of such proprietor, in the compounding of his or her
18 own prescriptions or to prevent him or her from supplying to
19 his or her patients such medicines as he or she may deem
20 proper, if such supply is not made as a sale.

21 (c) The exception provided in subsection (b) of this
22 section does not apply to an ambulatory health care facility,
23 as that term is defined in section one, article five-b, chapter
24 sixteen of this code, that offers pharmaceutical care or a
25 facility operated to provide health care or mental health care
26 services free of charge or at a reduced rate that operates a
27 charitable clinic pharmacy: *Provided*, That a legally licensed
28 and qualified practitioner of medicine or dentistry may
29 supply medicines to patients that he or she treats in a free
30 clinic and that he or she deems appropriate.



CHAPTER 164

**(Com. Sub. for H.B. 3056 - By Delegates Perdue, Marshall,
Evans, Fleischauer, Guthrie, Staggers and Eldridge)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-5-30, relating
to authorization for pharmacists to administer immunizations,
setting forth limitations on those immunizations as to type of
immunizations and age of the recipient; establishing training

requirements, establishing reporting requirements; providing rule making authority and requiring annual reporting to the West Virginia Board of Pharmacy.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-5-30, to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-30. Administration of immunizations.

1 (a) A pharmacist licensed under the provisions of this
2 article and meeting the requirements of this section may
3 administer immunizations for the following to any person
4 eighteen years of age or older: Influenza and Pneumonia.

5 (b) The Board of Pharmacy with the advice of the Board
6 of Medicine and the Board of Osteopathy shall propose rules
7 for legislative approval in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code to effectuate
9 the provisions of this section. These rules shall provide, at a
10 minimum, for the following:

11 (1) Establishment of a course, or provide a list of
12 approved courses, in immunization administration. The
13 courses must be based on the standards established for such
14 courses by the Centers for Disease Control and Prevention in
15 the public health service of the United States Department of
16 Health and Human Services;

17 (2) Definitive treatment guidelines which shall include,
18 but not be limited to, appropriate observation for an adverse
19 reaction of an individual following an immunization;

20 (3) Prior to administration of immunizations, a
21 pharmacist shall have completed a board approved
22 immunization administration course and completed an
23 American Red Cross or American Heart Association basic
24 life-support training, and maintain certification in the same.

25 (4) Continuing education requirements for this area of
26 practice;

27 (5) Reporting requirements for pharmacists administering
28 immunizations to report to the primary care physician or
29 other licensed health care provider as identified by the person
30 receiving the immunization;

31 (6) Reporting requirements for pharmacists administering
32 immunizations to report to the West Virginia Statewide
33 Immunization Information (WVSI);

34 (7) That a pharmacist may not delegate the authority to
35 administer immunizations to any other person; and

36 (8) Any other provisions necessary to implement the
37 provisions of this section.

38 (c) The Board of Pharmacy, the Board of Medicine and
39 the Board of Osteopathy may propose joint rules for
40 legislative approval in accordance with the provisions of
41 article three, chapter twenty-nine-a of this code to permit
42 pharmacists licensed under the provisions of this article to
43 administer other immunizations such as Hepatitis A,
44 Hepatitis B, Herpes Zoster and Tetanus. These rules, if
45 promulgated, shall provide at a minimum the same provisions
46 contained in subsections (b)(1) through (b)(8) of this section.

CHAPTER 165

(Com. Sub. for H.B. 4495 - By Delegates Martin, DeLong, Armstead, Morgan, Higgins, Hatfield, Stephens, Perdue, Hrutkay, Border and Reynolds)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §30-7-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-7A-2 of said code, all relating to limiting the use of the titles of nurses.

Be it enacted by the Legislature of West Virginia:

That §30-7-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-7A-2 of said code be amended and reenacted, all to read as follows:

Article

- 7. Registered Professional Nurses.**
- 7A. Practical Nurses.**

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-10. Use of titles.

1 Any person licensed pursuant to this article may use the
2 title "registered nurse" and the abbreviation "R.N." or the
3 term "nurse". Except as otherwise provided in article seven-a
4 of this chapter, no other person may assume a title or use
5 abbreviations or any other words, letters, figures, signs, or
6 devices to indicate that the person using the same is a
7 registered professional nurse.

ARTICLE 7A. PRACTICAL NURSES.**§30-7A-2. Use of titles.**

1 (a) Any person licensed pursuant to this article may use
2 the title “licensed practical nurse,” “practical nurse” and the
3 abbreviation “L.P.N” or the term “nurse”. Except as
4 otherwise provided in article seven of this chapter, no other
5 person may assume such title, or use such abbreviation, or
6 any other words, letters, figures, signs, or devices to indicate
7 that the person using the same is a licensed practical nurse or
8 a practical nurse.

**CHAPTER 166**

**(Com. Sub. for H.B. 4474 - By Delegates Hatfield, Wysong,
Brown, Moye and Rodighiero)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-7-19, relating
to registered nurses required in operating rooms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be
amended by adding thereto a new section, designated §30-7-19, to
read as follows:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**§30-7-19. Circulating registered nurses.**

1 A registered nurse as defined in this article, qualified by
2 education, licensed, and experienced in operating room
3 nursing, shall be present as a circulating nurse in each
4 operating room in a hospital, or ambulatory surgical center as
5 defined by section one, article five-b, chapter sixteen of this
6 code, during operative procedures.

CHAPTER 167

**(Com. Sub. for H.B. 4494 - By Delegates Morgan, White,
Campbell, Hutchins, Higgins, Palumbo, Andes and Kominar)**

[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §30-9-2, §30-9-8, §30-9-13, §30-9-16, §30-9-17, §30-9-19 and §30-9-26 of the Code of West Virginia, 1931, as amended, all relating to the regulation of the practice of accountancy; adding definitions; clarifying references to auditing standards; reducing accountancy firm ownership requirements from sixty percent to a simple majority; modifying education, examination and experience requirements for certificates; eliminating certain notice requirements for substantial equivalency practitioners; revising criteria to determine substantial equivalency practice privileges; providing conditions for substantial equivalency practice privileges; allowing out-of-state firms to practice in this state without permits in certain circumstances; requiring the board to investigate complaints from boards of other states; allowing certain services to be performed by persons or business entities without authorizations in certain circumstances; and clarifying unlawful acts.

Be it enacted by the Legislature of West Virginia:

That §30-9-2, §30-9-8, §30-9-13, §30-9-16, §30-9-17, §30-9-19 and §30-9-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

§30-9-8. Education, examination and experience certificate requirements.

§30-9-13. Duty to inform board of denials, suspensions, revocations, limitations.

§30-9-16. Substantial equivalency practice privileges.

§30-9-17. Issuance and renewal of permits.

§30-9-19. Issuance and renewal of authorizations.

§30-9-26. Unlawful acts.

§30-9-2. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context or associated
3 language clearly indicates otherwise:

4 (1) “Affiliated entity” means an entity that controls, is
5 controlled by, or is under common control with, a firm. For
6 purposes of this definition, an entity controls another entity
7 if the entity directly or indirectly or acting in concert with
8 one or more other affiliated entities, or through one or more
9 subsidiaries, owns, controls, holds with power to vote, or
10 holds proxies representing, more than fifty percent of the
11 voting interest in such entity.

12 (2) “Assurance” means any act or action, whether written
13 or oral, expressing an opinion or conclusion about the
14 reliability of a financial statement or about its conformity
15 with any financial accounting standards.

16 (3) “Attest services” means providing any:

17 (A) Audit or other engagement to be performed in
18 accordance with the Statements on Auditing Standards;

19 (B) Review of a financial statement to be performed in
20 accordance with the Statements on Standards for Accounting
21 and Review Services;

22 (C) Examination of prospective financial information to
23 be performed in accordance with applicable Statements on
24 Standards for Attestation Engagements; or

25 (D) Engagement to be performed in accordance with the
26 Auditing Standards of the Public Company Accounting
27 Oversight Board.

28 (4) "Audit" means expressing an opinion about the
29 fairness of presentation of financial statements in accordance
30 with the Statements on Auditing Standards.

31 (5) "Authorization" means an authorization issued
32 pursuant to this article that entitles a permit holder or an
33 individual practitioner to perform attest or compilation
34 services.

35 (6) "Board" means the West Virginia Board of
36 Accountancy.

37 (7) "Business entity" means any corporation, partnership,
38 limited partnership, limited liability partnership, professional
39 limited liability partnership, limited liability company,
40 professional limited liability company, joint venture, business
41 trust or any other form of business organization. The term
42 "business entity" includes a firm.

43 (8) "Certificate" means a certificate as a certified public
44 accountant issued or renewed by the board pursuant to this
45 article or corresponding provisions of prior law.

46 (9) "Certified public accountant" or "CPA" means the
47 holder of a certificate.

48 (10) "Client" means a person or entity that agrees with a
49 licensee or licensee's employer to receive any professional
50 service.

51 (11) "Commission" means compensation, except a
52 referral fee, for recommending or referring any product or
53 service to be supplied by another person.

54 (12) "Compilation services" means providing a service
55 performed in accordance with the Statements on Standards
56 for Accounting and Review Services that presents, in the
57 form of a financial statement, information that is the
58 representation of management without an expression of
59 assurance on the statement: *Provided*, That this definition
60 does not apply to the use of the term "compilation" in section
61 thirty-one of this article.

62 (13) "Contingent fee" means a fee established for the
63 performance of any service pursuant to an arrangement in
64 which no fee will be charged unless a specified finding or
65 result is attained, or in which the amount of the fee is
66 otherwise dependent upon the finding or result of the service.
67 A fee fixed by a court, taxing authority or other public
68 authority is not a contingent fee.

69 (14) "Examination," when used with reference to
70 prospective financial statements, means expressing an
71 opinion about the fairness of presentation of financial
72 information in accordance with the Statements on Standards
73 for Attestation Engagements.

74 (15) "Financial statement" means a writing or other
75 presentation, including accompanying notes, which presents,
76 in whole or in part, historical or prospective financial

77 position, results of operations or changes in financial position
78 of any person, corporation, partnership or other entity.

79 (16) "Firm" means any business entity, including but not
80 limited to accounting corporations and professional limited
81 liability companies, in which two or more certified public
82 accountants or public accountants hold an ownership or
83 membership interest, in terms of the financial interests and
84 voting rights of all partners, officers, shareholders, members
85 or managers, and the primary business activity of which is
86 the provision of professional services to the public by
87 certified public accountants or public accountants.

88 (17) "Firm ownership requirements" means, with respect
89 to:

90 (A) Any professional limited liability company organized
91 pursuant to article thirteen, chapter thirty-one-b of this code,
92 consisting of one or more licensed certified public
93 accountants or licensed public accountants;

94 (B) Any other firm where:

95 (i) A simple majority of ownership of the firm, in terms
96 of financial interests and voting rights of all partners,
97 officers, shareholders, members or managers, belongs either
98 to:

99 (I) Certified public accountants holding a certificate
100 under section twelve of this article or the equivalent
101 provision of another state; or

102 (II) Public accountants who have met the continuing
103 professional education requirements of subsection (b),
104 section twelve of this article and who are not subject to the
105 exemption or limitation set forth in subdivisions (1) or (2),

106 subsection (b), section twelve of this article or similar
107 provisions of another state.

108 (ii) All owners of the firm who are not certified public
109 accountants or public accountants are active participants in
110 the firm or in affiliated entities.

111 (18) "Foreign" means any country other than the United
112 States.

113 (19) "Good moral character" means lack of a history of
114 dishonesty or felonious activity.

115 (20) "Home office" means the client's office address.

116 (21) "Individual practitioner" means a certified public
117 accountant or a public accountant who offers professional
118 services to the public but who does not practice in a firm.

119 (22) "License" means a certificate, permit, registration or
120 authorization.

121 (23) "Licensee" means the holder of a license.

122 (24) "Manager" means a manager of a professional
123 limited liability company.

124 (25) "Member" means a member of a professional limited
125 liability company.

126 (26) "Nonlicensee" means a person or business entity that
127 does not hold a license.

128 (27) "Out-of-state certificate" means a valid certificate as
129 a certified public accountant or equivalent designation issued
130 or renewed under the laws of another state: *Provided*, That
131 "out-of-state certificate" does not include any certificate as a

132 certified public accountant or equivalent designation that was
133 issued or renewed solely by virtue of a holder's prior status
134 as a public accountant or its equivalent in the state of
135 issuance and not by virtue of the holder's having met the
136 certification requirements of the state of issuance.

137 (28) "Out-of-state permit" means a valid permit as a firm
138 of certified public accountants or another designation
139 equivalent to a permit issued or renewed by the board and
140 that is issued or renewed under the laws of another state.

141 (29) "Peer Review" means a study, appraisal or review of
142 one or more aspects of the professional work of a licensee by
143 a person who holds a certificate or an out-of-state certificate
144 and who is not affiliated with the licensee being reviewed.

145 (30) "Permit" means a permit issued to a firm pursuant to
146 this article.

147 (31) "Principal place of business" means the licensee's
148 office location in the state where the licensee holds a
149 certificate or registration.

150 (32) "Professional services" means those services that
151 involve the specialized knowledge and skills of a certified
152 public accountant or a public accountant delivered by any
153 means, including but not limited to, in person, by mail,
154 telephone or by electronic means.

155 (33) "Public accountant" means a person holding a
156 registration who is not a certified public accountant.

157 (34) "Referral fee" means compensation for recommending
158 or referring any service of a licensee to any person.

159 (35) "Registration" means a registration as a public
160 accountant issued by the board pursuant to prior law

161 governing the registration of public accountants and renewed
162 by the board pursuant to this article.

163 (36) "Report," when used with reference to financial
164 statements, means an opinion or disclaimer of opinion or
165 other form of language or representation which states or
166 implies any form of assurance or denial of assurance.

167 (37) "Rule" means any rule proposed for legislative
168 approval by the board pursuant to this article.

169 (38) "State" means any state of the United States, the
170 District of Columbia, Puerto Rico, the U.S. Virgin Islands or
171 Guam.

172 (39) "Substantial equivalency" or "substantially equivalent"
173 means or refers to a determination by the board or its
174 designee that the education, examination and experience
175 requirements contained in the statutes or rules of another
176 state are comparable to or exceed the education, examination
177 and experience requirements contained in the Uniform
178 Accountancy Act, or that an individual certified public
179 accountant's education, examination and experience
180 qualifications are comparable to or exceed the education,
181 examination and experience requirements contained in the
182 Uniform Accountancy Act.

183 (40) "Substantial equivalency practitioner" means any
184 individual whose principal place of business is not in this
185 state, who holds a certificate from another state and has
186 complied with the provisions of section sixteen of this article.

187 (41) "Uniform Accountancy Act" means the Uniform
188 Accountancy Act, fifth edition, revised (July 2007), jointly
189 published by the American Institute of Certified Public
190 Accountants and the National Association of State Boards of
191 Accountancy.

§30-9-8. Education, examination and experience certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who meets the following requirements:

3 (1) At least one hundred fifty semester hours of college
4 education including a baccalaureate or higher degree
5 conferred by a college or university, the total education
6 program to include an accounting concentration or
7 equivalent, as determined by the board to be appropriate;

8 (2) Passage of the uniform certified public accountant
9 examination published by the American institute of certified
10 public accountants or its successor and any additional
11 examination required by the board by rule that tests the
12 applicant's knowledge of subjects related to the practice of
13 accounting: *Provided*, That before applying for the
14 examination required by this subsection, an applicant is
15 required to have met the baccalaureate degree requirement
16 but not the one hundred fifty semester hour requirement of
17 subsection (1) of this section; and

18 (3) At least one year of experience in providing any type
19 of service or advice involving the use of accounting, attest,
20 compilation, management advisory, financial advisory, tax or
21 consulting skills. The experience requirement may be
22 satisfied by employment in private practice, government,
23 industry, not-for-profit organization, academia or public
24 practice. An applicant's experience must be verified by a
25 licensee and must meet requirements specified by rule.

§30-9-13. Duty to inform board of denials, suspensions, revocations, limitations.

1 Each licensee must notify the board, within thirty days of
2 its occurrence, of any denial, suspension or revocation of or
3 any limitation placed on a license or out-of-state certificate.

§30-9-16. Substantial equivalency practice privileges.

1 (a) An individual whose principal place of business is not
2 in this state and who holds an out-of-state certificate has all
3 the rights and privileges of a certificate holder of this state
4 without the need to obtain a certificate if:

5 (1) The state that issued the out-of-state certificate has
6 certification requirements that are substantially equivalent to
7 the certification requirements of the Uniform Accountancy
8 Act; or

9 (2) The individual holds a valid license as a certified
10 public accountant from any state which the National
11 Association of State Boards of Accountancy National
12 Qualification Appraisal Service has not verified to be in
13 substantial equivalence with the CPA licensure requirements
14 of the Uniform Accountancy Act and the individual has
15 obtained from the National Association of State Boards of
16 Accountancy National Qualification Appraisal Service
17 verification that his or her CPA qualifications are
18 substantially equivalent to the CPA licensure requirements of
19 the Uniform Accountancy Act. Any individual who qualifies
20 for practice privileges pursuant to this subdivision before the
21 first day of January, two thousand twelve, and who passed
22 the uniform CPA examination and holds a valid license
23 issued by any other state is exempt from the education
24 requirement in the Uniform Accountancy Act for purposes of
25 this section.

26 (b) An individual who offers or renders professional
27 services under this section shall be granted practice privileges
28 in this state, and no notice, fee, or other submission is
29 required of any such individual. Such an individual is subject
30 to the requirements in subsection (c) of this section.

31 (c) (1) Any individual performing or offering to perform
32 any services in the state as a substantial equivalency practitioner

33 and the firm which employs that out-of-state certificate holder
34 are simultaneously subject to the jurisdiction of the board
35 concerning all matters within the scope of this article and are
36 required to comply with the provisions of this article and
37 applicable rules.

38 (2) The state board of accountancy of the state of
39 issuance of any substantial equivalency practitioner's
40 certificate is appointed as his or her agent upon which
41 process may be served in an action or proceeding by the
42 board.

43 (d) In the event the certificate from the state of the
44 individual's principal place of business is no longer valid, the
45 individual will cease offering or rendering professional
46 services in this state individually and on behalf of a firm.

47 (e) Subject to the provisions of subsection (f) of this
48 section, an individual who qualifies for the practice privileges
49 under this section may only perform any of the following
50 services, for any entity with its home office in this state,
51 through a firm which has obtained a permit issued under
52 section seventeen of this article and an authorization issued
53 under section nineteen of this article:

54 (1) A financial statement audit or other engagement to be
55 performed in accordance with the Statements on Auditing
56 Standards;

57 (2) An examination of prospective financial information
58 to be performed in accordance with the Statements on
59 Standards for Attestation Engagements; or

60 (3) An engagement to be performed in accordance with
61 the Auditing Standards of the Public Company Accounting
62 Oversight Board.

63 (f) An individual practitioner who is also a substantial
64 equivalency practitioner may provide the services set out in
65 subsection (e) of this section without obtaining a permit
66 issued under section seventeen of this article, but must obtain
67 the authorization issued under section nineteen of this article.

68 (g) A certificate holder of this state offering or rendering
69 services or using their CPA title in another state is subject to
70 disciplinary action in this state for an act committed in
71 another state for which the certificate holder would be subject
72 to discipline in that other state.

73 (h) The board shall investigate any complaint made by
74 the board of accountancy of another state.

§30-9-17. Issuance and renewal of permits.

1 (a) The board shall grant or renew permits to firm
2 applicants that demonstrate their qualifications in accordance
3 with this section.

4 (b) Firms meeting the following criteria must hold a
5 permit issued under this section:

6 (1) Any firm with an office in this state performing attest
7 or compilation services;

8 (2) Any firm with an office in this state that uses the title
9 "CPA" or "CPA firm"; or

10 (3) Any firm that does not have an office in this state but
11 performs attest services described in subdivisions (A), (C) or
12 (D), subsection (3), section two of this article for a client
13 having its home office in this state.

14 (c) A firm that does not have an office in this state may
15 perform services described in subdivision (B), subsection (3),

16 section two of this article, or subsection (12), section two of
17 this article, for a client having its home office in this state and
18 may use the title “CPA” or “CPA firm” without a permit
19 issued under this section only if it meets firm ownership
20 requirements and is undergoing a peer review program that
21 conforms with applicable rules, and performs the services
22 through an individual with practice privileges under section
23 sixteen of this article.

24 (d) A firm that does not have an office in this state and
25 does not perform attest services or compilation services for
26 a client having its home office in this state may perform other
27 professional services while using the title “CPA” or “CPA
28 firm” in this state without a permit issued under this section
29 only if it performs the services through an individual with
30 practice privileges under section sixteen of this article:
31 *Provided*, That the firm may lawfully perform the services in
32 the state where the individuals with practice privileges have
33 their principal place of business.

34 (e) Applicants for a permit must demonstrate that:

35 (1) Each partner, officer, shareholder, member or
36 manager of the firm whose principal place of business is in
37 this state and who performs or offers to perform professional
38 services in this state holds a certificate or a registration; and

39 (2) The firm meets firm ownership requirements.

40 (f) An application for the issuance of a permit must be
41 made in the form specified by the board by rule and must
42 include the following information:

43 (1) The names of all partners, officers, shareholders,
44 members or managers of the firm whose principal place of
45 business is in this state;

46 (2) The location of each office of the firm within this
47 state and the name of the certified public accountant or public
48 accountant in charge of each office; and

49 (3) Any issuance, denial, revocation or suspension of an
50 out-of-state permit.

51 (g) Permits will initially be issued for a period to expire
52 on the thirtieth day of June following the date of issue.

53 (h) The board shall renew a permit for a one-year period
54 beginning on the first day of July of each year after initial
55 issuance in accordance with the requirements for initial
56 issuance of a permit in this section.

57 (i) The board shall charge an application fee for the initial
58 issuance or renewal of a permit in an amount specified by
59 rule.

§30-9-19. Issuance and renewal of authorizations.

1 (a) Commencing with the first day of July, two thousand
2 one, no person or business entity may provide attest or
3 compilation services without having first obtained an
4 authorization issued by the board. An applicant may apply
5 to provide attest services or compilation services or both.
6 This requirement does not apply to individuals performing
7 attest or compilation services based on the practice privilege
8 under section sixteen of this article except as required under
9 subsection (e) of that section, or to business entities
10 performing attest or compilation services that are not required
11 to obtain a permit under subsections (c) or (d), section
12 seventeen of this article. Any substantial equivalency
13 practitioner who issues a compilation report as an individual
14 practitioner or on behalf of a business entity may do so
15 without obtaining an authorization under this section so long
16 as such individual does so in accordance with the

17 requirements set out in subdivisions (1) and (2), subsection
18 (f) of this section.

19 (b) Applications for the issuance of authorizations must
20 be made in the form specified by the board by rule.

21 (c) Authorizations will initially be issued for a period to
22 expire on the thirtieth day of June following the date of initial
23 issuance.

24 (d) The board shall issue an authorization to a permit
25 holder that demonstrates that:

26 (1) Any certified public accountant, public accountant or
27 substantial equivalency practitioner who signs or authorizes
28 someone to sign an attest or compilation report on behalf of
29 the permit holder meets the competency requirements set
30 forth in the professional standards for those services specified
31 by rule;

32 (2) All attest and compilation services rendered by the
33 permit holder in this state are verified by a certified public
34 accountant, substantial equivalency practitioner or a public
35 accountant; and

36 (3) The permit holder is undergoing a peer review
37 program that conforms with applicable rules.

38 (e) A firm may simultaneously apply for the issuance or
39 renewal of a permit and the issuance or renewal of an
40 authorization by demonstrating that the firm meets the
41 requirements of section seventeen of this article and
42 subsection (d) of this section.

43 (f) The board shall issue an authorization to an individual
44 practitioner who demonstrates that he or she:

45 (1) Signs an attest or compilation report as a certified
46 public accountant, public accountant or substantial
47 equivalency practitioner, as applicable and meets the
48 competency requirements set forth in the professional
49 standards for those services specified by rule; and

50 (2) Is undergoing a peer review program that conforms
51 with applicable rules.

52 (g) The board shall renew an authorization for a one year
53 period beginning on the first day of July of each year after
54 initial issuance in accordance with the requirements for initial
55 issuance of an authorization in this section.

56 (h) The board shall charge an application fee for the
57 initial issuance or renewal of an authorization in an amount
58 specified by rule.

§30-9-26. Unlawful acts.

1 (a) No authorization holder or substantial equivalency
2 practitioner may perform attest or compilation services in a
3 manner other than pursuant to the statements on standards
4 relating to those services specified by rule.

5 (b)(1) No licensee or substantial equivalency practitioner
6 or firm may, for a commission or referral fee, recommend or
7 refer to a client any product or service or refer any product or
8 service to be supplied by a client, or perform for a contingent
9 fee any professional services for or receive a referral fee,
10 commission or contingent fee from a client for whom the
11 licensee, the substantial equivalency practitioner or firm
12 works or associates or in which either of them owns an
13 interest or who performs for that client:

14 (A) An audit or review of a financial statement;

15 (B) A compilation of a financial statement when the
16 licensee or substantial equivalency practitioner expects, or
17 reasonably might expect, that a third party will use the
18 financial statement and the compilation report does not
19 disclose a lack of independence; or

20 (C) An examination of prospective financial information.

21 (2) The prohibition in subdivision one of this subsection
22 applies only during the period in which the licensee or
23 substantial equivalency practitioner is engaged to perform
24 any of the services listed in subdivision (1) of this subsection
25 and the period covered by any historical financial statements
26 involved in any of those listed services.

27 (c) No licensee or substantial equivalency practitioner
28 may for a contingent fee prepare an original or amended tax
29 return or claim for a tax refund or serve as an expert witness.

30 (d) No licensee may use a professional or firm name or
31 designation that: (1) Is deceptive or misleading about the
32 legal form of the firm, or about the persons who are partners,
33 officers, members, managers or shareholders of the firm, or
34 about any other matter; or (2) contains a name or term other
35 than past or present partners, officers, members, managers or
36 shareholders of the firm or of a predecessor firm engaged in
37 the practice of accounting.

38 (e) No person or firm that does not hold an authorization
39 to perform attest services, or is not otherwise exempt from
40 the authorization requirement, may perform or offer to
41 perform attest services, and no person or firm that does not
42 hold an authorization to perform compilation services, or is
43 not otherwise exempt from the authorization requirement,
44 may perform or offer to perform compilation services.

45 (f) No individual practitioner who holds an authorization
46 may perform or offer to perform attest services for a client of

47 his or her employer through or on behalf of his or her
48 employer.

49 (g) No person who is not a certified public accountant, a
50 public accountant or a substantial equivalency practitioner
51 may:

52 (1) Issue a report on financial statements of any other
53 person, business entity, or governmental unit or otherwise
54 render or offer to render any attest or compilation service:
55 *Provided*, That this subdivision does not prohibit any act of
56 a public official or public employee in the performance of
57 that person's duties or the performance by any person of other
58 services involving the use of accounting skills, including the
59 preparation of tax returns, management advisory services,
60 and the preparation of financial statements without the
61 issuance of reports thereon: *Provided, however*, That this
62 subdivision does not prohibit any person who is not a
63 certified public accountant, a public accountant or a
64 substantial equivalency practitioner to prepare financial
65 statements or issue nonattest transmittals of information
66 thereon that do not purport to have been performed in
67 accordance with the applicable statements on standards;

68 (2) Claim to hold a certificate, registration or
69 authorization or make any other claim of licensure or
70 approval related to the preparation of financial statements or
71 the issuance of reports thereon that is false or misleading;

72 (3) Claim to have used "generally accepted accounting
73 principles," "generally accepted accounting standards,"
74 "public accountancy standards," "public accountancy
75 principles," "generally accepted auditing principles" or
76 "generally accepted auditing standards" in connection with
77 the preparation of any financial statement, or use any of these
78 terms to describe any complete or partial variation from those
79 standards or principles or to imply complete or partial
80 conformity with those standards or principles;

81 (4) State or imply that he or she is tested, competent,
82 qualified or proficient in financial standards established by
83 the American institute of certified public accountants or any
84 agency thereof, the governmental accounting standards board
85 or any agency thereof, the securities and exchange
86 commission or any agency thereof, the financial accounting
87 standards board or any agency thereof, or any successor
88 entity to any of these entities;

89 (5) Assume or use the titles "certified accountant,"
90 "chartered accountant," "enrolled accountant," "licensed
91 accountant," "registered accountant," "Auditor,"
92 "independent Auditor" or any other title or designation that
93 a reasonable person may confuse with the titles "certified
94 public accountant" or "public accountant," or assume or use
95 the abbreviations "CA," "LA," "RA," or similar abbreviation
96 that a reasonable person may confuse with the abbreviations
97 "CPA" or "PA": *Provided*, That the title "Enrolled Agent"
98 and the abbreviation "EA" may only be used by individuals
99 so designated by the Internal Revenue Service;

100 (6) Use language in any statement relating to the financial
101 affairs of a person or entity that is conventionally used by a
102 licensee in a report on a financial statement;

103 (7) Use the words "audit," "audit report," "independent
104 audit," "examine," "examination," "opinion" or "review" in
105 a report on a financial statement;

106 (8) Assume or use any title that includes the words
107 "accountant," "Auditor," or "accounting" in connection with
108 any other language (including the language of a report) that
109 implies that the person or business entity holds a license or
110 has special competence in accounting or auditing: *Provided*,
111 That this subdivision does not prohibit any officer, partner,
112 member, manager or employee of any business entity from
113 affixing that person's own signature to any statement in
114 reference to the financial affairs of the business entity with

115 any wording designating the position, title, or office that the
116 person holds therein, nor does it prohibit any act of a public
117 official or employee in the performance of the person's
118 duties;

119 (9) Use or assume the title "certified public accountant,"
120 the abbreviation "CPA," or any other title, designation, word,
121 combination of letters, abbreviation, sign, card or device that
122 may lead a reasonable person to believe that the person is a
123 certified public accountant or the holder of an out-of-state
124 certificate; or

125 (10) Assume or use the title "public accountant," the
126 abbreviation "PA," or any other title, designation, word,
127 combination of letters, abbreviation, sign, card or device that
128 may lead a reasonable person to believe that the person is a
129 public accountant.

130 (h) Only a business entity that holds a permit or is exempt
131 from the permit requirement under subsections (c) or (d),
132 section seventeen of this article, may assume or use the
133 designations "certified public accountants," "CPA firm,"
134 "public accountants," or "PA firm" or the abbreviations
135 "CPAs," or "PAs," or any other title, designation, word,
136 combination of letters, abbreviation, sign, card or device that
137 may lead a reasonable person to believe that the business
138 entity is a firm or holds a permit.

139 (i) The display or uttering by a person of any printed,
140 engraved or written instrument, bearing the name of the
141 person in conjunction with any of the claims, titles, words or
142 phrases listed in this section is, for purposes of this section,
143 prima facie evidence that the person has engaged in the acts.

144 (j) Notwithstanding any provision in this section to the
145 contrary, it is not a violation of this section for a firm or
146 business entity which does not hold a permit under section
147 seventeen or an authorization under section nineteen of this

148 article and which does not have an office in this state to
149 provide its professional services in this state so long as it
150 complies with subsection (c) or (d) of section seventeen,
151 whichever is applicable, and with any applicable provision of
152 section nineteen of this article.



CHAPTER 168

**(H.B. 4072 - By Delegates Morgan, Martin, Argento, Caputo,
Eldridge, Hartman, D. Poling, Staggers, Swartzmiller,
Canterbury and Porter)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-13-25, relating
to regulatory board review of the Board of Registration for
Professional Engineers.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §30-13-25, to read as
follows:

ARTICLE 13. ENGINEERS.

§30-13-25. Required regulatory board review.

1 The Board of Registration for Professional Engineers is
2 subject to a regulatory board review, as required in the
3 provisions of article ten, chapter four of this code.



CHAPTER 169

**(Com. Sub. for H.B. 4337 - By Delegates Morgan, Martin,
Hatfield and Guthrie)**

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-27-18, relating to authorizing the Board of Barbers and Cosmetologists to increase fees for one year.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-27-18, to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-18. Limited fee increase.

1 Notwithstanding the specific fee amounts set forth in this
2 article, the board is authorized to increase the following fees
3 for a period of one year, commencing the first day of
4 January, two thousand nine:

5 (1) For a licensing examination, a fee of fifty dollars
6 (\$50.00);

7 (2) For a license issued by the board, a fee of thirty-five
8 dollars (\$35.00);

9 (3) For a reciprocal license issued to a person educated or
10 licensed in another state, a fee of one hundred dollars
11 (\$100.00); and

12 (4) For a student permit issued by the board, a fee of
13 twenty-five dollars (\$25.00).



CHAPTER 170

**(H.B. 4073 - By Delegates Morgan, Martin, Argento, Caputo,
Eldridge, Hartman, D. Poling, Staggers, Swartzmiller,
Canterbury and Porter)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §30-31-15 of the Code of West Virginia, 1931, as amended, relating to regulatory board review of the West Virginia Board of Examiners in Counseling.

Be it enacted by the Legislature of West Virginia:

That §30-31-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Required regulatory board review.

1 The West Virginia Board of Examiners in Counseling is
2 subject to a regulatory board review, as required in the
3 provisions of article ten, chapter four of this code.

CHAPTER 171

(Com. Sub. for H.B. 4036 - By Delegate Morgan)

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-34-6a; and to amend and reenact §30-34-9 of said code, all relating to the respiratory care board; authorizing emergency and legislative rules; providing for temporary student permits; and establishing fees for permits.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-34-6a; and that §30-34-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-6a. Rule-making authority.

§30-34-9. Temporary student permits.

§30-34-6a. Rule-making authority.

- 1 (a) The board shall propose rules for legislative approval,
- 2 in accordance with the provisions of article three, chapter
- 3 twenty-nine-a of this code, to implement the provisions of
- 4 this article, including:

5 (1) Standards and requirements for licensure and permits
6 to practice respiratory care;

7 (2) Procedures for examination and reexamination;

8 (3) Educational and experience requirements;

9 (4) Standards for approval of courses;

10 (5) Procedures for the issuance and renewal of licenses
11 and temporary permits;

12 (6) Procedures which may be delegated to a student
13 practicing under a temporary student permit;

14 (7) A fee schedule;

15 (8) Continuing education requirements for licensees;

16 (9) The procedure for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee or permittee;

18 (10) Requirements for inactive or revoked licensees or
19 temporary permits; and

20 (11) Any other rules necessary to effectuate the
21 provisions of this article.

22 (b) All rules in effect on the effective date of this section
23 remain in effect until they are amended, repealed or replaced.

§30-34-9. Temporary student permits.

1 (a) Subject to the provisions of subsection (d) of this
2 section, the board may issue a temporary student permit to
3 practice respiratory care for a period of up to six months to a
4 student enrolled in a respiratory care educational program
5 which is approved by the board if the student submits:

6 (1) A student work permit form signed by the program
7 director and by a principal administrative official of the
8 institution where the program is located;

9 (2) An official transcript indicating successful completion
10 of a minimum of thirty semester hours or the quarter hour
11 equivalent, eighteen of which must be specific to respiratory
12 care core curriculum, and at least two hundred clinical hours;

13 (3) Documentation from the program director and by a
14 principal administrative official of the institution where the
15 program is located stating that the student has successfully
16 completed didactic and clinical competency requirements
17 equal to the first year curriculum and approved by the board;
18 and

19 (4) A signed permit application form and an initial permit
20 application fee as prescribed by rule.

21 (b) A student practicing under a temporary student
22 permit may work only under the supervision of an employee
23 of the same department with a minimum Licensed
24 Respiratory Therapist Certified credential issued by the board
25 and who is present on the premises and available to the
26 student at all times.

27 (c) A student practicing under a temporary student
28 permit may not use worked paid hours as a substitute for
29 clinical rotations required by his or her respiratory care
30 educational program.

31 (d) Upon expiration of the initial permit, the student may
32 apply for one renewal permit for up to six additional months
33 by providing documentation from the program director
34 stating the student is actively enrolled in at least nine
35 semester hours, and is making satisfactory progress in his or
36 her respiratory care core curriculum and clinical rotations,
37 and payment of a renewal fee as prescribed by rule.

38 (e) The board may promulgate emergency rules, pursuant
39 to the provisions of section fifteen, article three, chapter
40 twenty-nine-a of this code, to set forth those procedures
41 which may be delegated to a student practicing under a
42 temporary student permit and fees for issuance and renewal
43 of temporary student permits. The board may not issue
44 temporary student permits unless and until the rule authorized
45 by this subsection is in effect.

CHAPTER 172

**(H.B. 4085 - By Delegates Morgan, Martin, Argento, Caputo,
Eldridge, Hartman, D. Poling, Staggers, Swartzmiller,
Canterbury and Porter)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §30-36-20 of the Code of West Virginia, 1931, as amended, relating to regulatory board review of the West Virginia Acupuncture Board.

Be it enacted by the Legislature of West Virginia:

That §30-36-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-20. Required regulatory board review.

1 The West Virginia Acupuncture Board is subject to a
2 regulatory board review, as required in the provisions of
3 article ten, chapter four of this code.

CHAPTER 173

(Com. Sub. for S.B. 492 - By Senator White)

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §7-7-4a of the Code of West Virginia, 1931, as amended, relating to prosecuting attorneys; eliminating part-time prosecutors; allowing prosecutors to remain as part-time prosecutors, upon mutual agreement of county commissions and prosecutors; authorizing an increase in salary for a part-time prosecutor who becomes a full-time prosecutor; allowing prosecutors and counties to mutually agree to a change in part-time or full-time status; providing for a readjustment in salary if full-time prosecutor returns to part-time status; providing a mechanism for review of county finances by the state auditor to confirm the availability of county funds to support a full-time prosecutor; exceptions; and effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

1 (a) Notwithstanding the provisions of section four of this
2 article to the contrary, on or before the first day of January,
3 two thousand nine, a county may not have a part-time
4 prosecutor. The county commissions of counties in Class VI
5 through X shall then compensate all prosecuting attorneys
6 that have changed to full-time by virtue of this section at the
7 same rate of compensation established for a prosecuting
8 attorney in a Class V county: *Provided*, That, upon mutual
9 agreement of the prosecuting attorney and the county
10 commission, the prosecuting attorney may choose to remain
11 a part-time prosecuting attorney.

12 (b) If, after the first day of January, two thousand nine,
13 during the course of a term of office, pursuant to subsection
14 (a) of this section, any prosecutor who becomes full-time or
15 chooses to remain part-time who believes that the
16 responsibilities of his or her office either no longer requires
17 a full-time position or believes that the duties of the part-time
18 position have become full-time, may, by mutual agreement
19 with the county commission, either return to part-time status
20 or change to full-time status: *Provided*, That, if the decision
21 to change to full-time or part-time status is made during an
22 election year, the decision must be by mutual agreement
23 between the county commission and the prosecutor-elect:
24 *Provided, however*, That any prosecutor who returns to part-
25 time status shall, thereafter, be compensated at the rate of
26 compensation set forth in section four of this article for a
27 prosecuting attorney of his or her class county and any
28 prosecutor that changes to full-time status shall, thereafter, be
29 compensated at the same rate of compensation established for
30 a prosecuting attorney in a Class V county.

31 (c) If, after the first day of January, two thousand nine,
32 any prosecutor or prosecutor-elect desires to change to full-
33 time status and the county commission objects to such
34 change due to an alleged financial condition of the county,
35 then either party may request the State Auditor's office to

36 examine the county's financial condition and certify whether
37 or not there are sufficient funds to support a full-time
38 position. The State Auditor shall then, within ninety days of
39 such request, certify whether or not there are sufficient funds
40 available to support a full-time prosecutor in the county. If
41 the State Auditor certifies that there are sufficient funds
42 available, then the prosecutor or prosecutor elect must be
43 changed to full-time status and be compensated at the same
44 rate of pay as a prosecutor in a Class V county.

45 (d) Nothing in this section may be construed to prohibit
46 a part-time prosecuting attorney from remaining part-time
47 with the mutual agreement of the county commission.

CHAPTER 174

**(Com. Sub. for S.B. 476 - By Senators Tomblin, Mr. President,
Foster, Kessler and Love)**

[Passed March 8, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-5-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-5-6, all relating to public employee benefits generally; providing that members of the parole board are eligible for incremental salary increases; state eligible employees hired prior to the first day of July, two thousand one, to be paid for unused sick leave days in excess of fifty days once per year; creating the State Employee Sick Leave Fund; naming the Secretary of the Department of Administration as administrator of the fund; and authorizing rulemaking to implement the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That §5-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5-5-6, all to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

§5-5-6. Payment for unused sick leave.

§5-5-1. Definitions.

1 For the purposes of this article:

2 (a) "Eligible employee" means:

3 (1) Any regular full-time employee of the state or any
4 spending unit of the state who is eligible for membership in
5 any state retirement system of the State of West Virginia or
6 other retirement plan authorized by the state: *Provided*, That
7 the mandatory salary increase required by this article does
8 not apply to any employee of the state whose compensation
9 is fixed by statute or by statutory schedule other than
10 employees described in this section. Clerks, deputy clerks
11 and magistrate assistants of magistrate courts are eligible for
12 the incremental salary increases provided in this article with
13 the increases to be allowable in addition to the maximum
14 salaries and compensation for the employee offices under the
15 magistrate court system statutes of article one, chapter fifty
16 of this code. Members of the Board of Parole are eligible for
17 the incremental salary increases provided in this article with
18 the increases to be allowable in addition to the salaries and
19 compensation provided in section two-a, article seven,
20 chapter six of this code. This article may not be construed to
21 mandate an increase in the salary of any elected or appointed
22 officer of the state;

23 (2) Any classified employee as defined in section two,
24 article nine, chapter eighteen-b of this code who is an
25 employee of a state institution of higher education, the
26 Higher Education Policy Commission or the Council for
27 Community and Technical College Education; or

28 (3) Any full-time faculty member as defined in section
29 one, article eight, chapter eighteen-b of this code who is an
30 employee of a state institution of higher education, the
31 Higher Education Policy Commission or the West Virginia
32 Council for Community and Technical College Education.

33 (b) "Years of service" means full years of totaled service
34 as an employee of the State of West Virginia. For full-time
35 faculty as defined in this section, each nine or more months
36 of contracted employment during a fiscal year equals one full
37 year of service; and

38 (c) "Spending unit" means any state office, department,
39 agency, board, commission, institution, bureau or other
40 designated body authorized to hire employees.

§5-5-6. Payment for unused sick leave.

1 (a) Every eligible employee, as defined in section one of
2 this article, who was hired prior to the first day of July, two
3 thousand one, and who has accumulated at least sixty-five
4 days of unused sick leave may be paid, at his or her option,
5 for unused sick leave in an amount of days as designated by
6 the employee not to exceed the number of sick leave days
7 that would reduce an employee's sick leave balance to less
8 than fifty days. The employee shall be paid at a rate equal to
9 one quarter of their usual rate of daily pay during that
10 calendar year. The "daily rate of pay" of an employee paid
11 a monthly salary is calculated by multiplying the monthly
12 salary by twelve and dividing that number into the number of
13 workdays for that calendar year. As used in this section,
14 "workday" does not include weekends. Any payment for

15 unused sick leave may not be a part of final average salary
16 computation.

17 (b) Payment for unused sick leave may be made only
18 once per fiscal year on either the pay day immediately
19 following the first full pay period in July or the first full pay
20 period in December. Payments shall be made out of the fund
21 established in subsection (d) of this section.

22 (c) Any eligible employee opting to receive payment in
23 exchange for unused sick leave must contract, in a form to be
24 prescribed by the Department of Administration, agreeing to
25 reimburse the fund for the amount exchanged plus twelve
26 percent annum if the employee elects to separate from
27 employment within sixty months of the date of the exchange
28 pursuant to subsection (a) of this section. The Department of
29 Administration shall pursue collection of the obligation,
30 either by itself, or by contracting with a collection agency.
31 For purposes of this section, "separation" does not include
32 separation from employment by death or retirement, but does
33 refer to any other manner in which employment may be
34 terminated.

35 (d) Payments shall be made in the order that eligible
36 employees apply for the payments so long as funds are
37 available. In the event the fund is insufficient to pay all
38 employees who have applied for payment in a fiscal year,
39 employees who do not receive payment are eligible for
40 payment in the next fiscal year are not required to reapply
41 and shall receive payment in the order in which they first
42 applied, unless the employee chooses to withdraw the
43 application prior to the next fiscal year.

44 (e) Effective the first day of July, two thousand nine,
45 there is created a special revenue account within the State
46 Treasury to be known as the State Employee Sick Leave
47 Fund which shall consist of moneys appropriated by the

48 Legislature and shall be administrated by the Secretary of the
49 Department of Administration.

50 (f) The secretary shall adopt procedural rules pursuant to
51 article three, chapter twenty-nine-a of this code to implement
52 the provisions of this section. The rules shall include, but not
53 be limited to, provisions for the application and the
54 application process.

55 (g) Each spending unit, as defined in section one of this
56 article, shall verify to the secretary an employee is eligible
57 for payment under this section and shall verify the number of
58 unused sick leave days for all employees at least once per
59 year. The secretary shall maintain sick leave records for all
60 spending units. All sick leave days that an employee is paid
61 for as provided in this section shall be deducted from the
62 employee's sick leave balance by the secretary and the
63 secretary shall verify to each spending unit the amount of
64 days that have been deducted from an employee's sick leave
65 balance. An employee shall not be permitted to reacquire
66 any sick leave days that he or she received payment for under
67 the provisions of this section.

CHAPTER 175

**(S.B. 780 - By Senators Bowman, Bailey, Barnes, Boley, Kessler,
McCabe, Minard, Plymale, Sypolt, White and Yoder)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §6C-2-1, §6C-2-2, §6C-2-3 and
§6C-2-4 of the Code of West Virginia, 1931, as amended, all
relating to the West Virginia Public Employees Grievance

Procedure; clarifying definitions, general provisions and grievance proceedings; defining “conference” and “level one hearing”; increasing time to hold a level one hearing; deleting mediation-arbitration; adding private arbitration; clarifying level three hearing; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §6C-2-1, §6C-2-2, §6C-2-3 and §6C-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

§6C-2-2. Definitions.

§6C-2-3. Grievance procedure generally.

§6C-2-4. Grievance procedural levels.

§6C-2-1. Purpose.

1 (a) The purpose of this article is to provide a procedure
2 for the resolution of employment grievances raised by the
3 public employees of the State of West Virginia, except as
4 otherwise excluded in this article.

5 (b) Resolving grievances in a fair, efficient, cost-effective
6 and consistent manner will maintain good employee morale,
7 enhance employee job performance and better serve the
8 citizens of the State of West Virginia.

9 (c) Nothing in this article prohibits the informal
10 disposition of grievances by stipulation or settlement agreed
11 to in writing by the parties, nor the exercise of any hearing
12 right provided in chapter eighteen or eighteen-a of this code.
13 Parties to grievances shall at all times act in good faith and
14 make every possible effort to resolve disputes at the lowest
15 level of the grievance procedure.

16 (d) Effective the first day of July, two thousand seven,
17 any reference in this code to the education grievance
18 procedure, the state grievance procedure, article twenty-nine,
19 chapter eighteen of this code or article six-a, chapter twenty-
20 nine of this code, or any subsection thereof, shall be
21 considered to refer to the appropriate grievance procedure
22 pursuant to this article.

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this
2 chapter:

3 (a) "Board" means the West Virginia Public Employees
4 Grievance Board created in article three of this chapter.

5 (b) "Chief administrator" means, in the appropriate
6 context, the commissioner, chancellor, director, president,
7 secretary or head of any state department, board,
8 commission, agency, state institution of higher education,
9 commission or council, the state superintendent, the county
10 superintendent, the executive director of a regional
11 educational service agency or the director of a multicounty
12 vocational center who is vested with the authority to resolve
13 a grievance. A "chief administrator" includes a designee,
14 with the authority delegated by the chief administrator,
15 appointed to handle any aspect of the grievance procedure as
16 established by this article.

17 (c) "Days" means working days exclusive of Saturday,
18 Sunday, official holidays and any day in which the
19 employee's workplace is legally closed under the authority of
20 the chief administrator due to weather or other cause
21 provided for by statute, rule, policy or practice.

22 (d) "Discrimination" means any differences in the
23 treatment of similarly situated employees, unless the

24 differences are related to the actual job responsibilities of the
25 employees or are agreed to in writing by the employees.

26 (e) (1) "Employee" means any person hired for
27 permanent employment by an employer for a probationary,
28 full- or part-time position.

29 (2) A substitute education employee is considered an
30 "employee" only on matters related to days worked or when
31 there is a violation, misapplication or misinterpretation of a
32 statute, policy, rule or written agreement relating to the
33 substitute.

34 (3) "Employee" does not mean a member of the West
35 Virginia State Police employed pursuant to article two,
36 chapter fifteen of this code, but does include civilian
37 employees hired by the Superintendent of the State Police.
38 "Employee" does not mean an employee of a constitutional
39 officer unless he or she is covered under the civil service
40 system, an employee of the Legislature or a patient or inmate
41 employed by a state institution.

42 (f) "Employee organization" means an employee
43 advocacy organization with employee members that has filed
44 with the board the name, address, chief officer and
45 membership criteria of the organization.

46 (g) "Employer" means a state agency, department, board,
47 commission, college, university, institution, State Board of
48 Education, Department of Education, county board of
49 education, regional educational service agency or
50 multicounty vocational center, or agent thereof, using the
51 services of an employee as defined in this section.

52 (h) "Favoritism" means unfair treatment of an employee
53 as demonstrated by preferential, exceptional or advantageous
54 treatment of a similarly situated employee unless the

55 treatment is related to the actual job responsibilities of the
56 employee or is agreed to in writing by the employee.

57 (i) (1) "Grievance" means a claim by an employee
58 alleging a violation, a misapplication or a misinterpretation
59 of the statutes, policies, rules or written agreements
60 applicable to the employee including:

61 (i) Any violation, misapplication or misinterpretation
62 regarding compensation, hours, terms and conditions of
63 employment, employment status or discrimination;

64 (ii) Any discriminatory or otherwise aggrieved
65 application of unwritten policies or practices of his or her
66 employer;

67 (iii) Any specifically identified incident of harassment;

68 (iv) Any specifically identified incident of favoritism; or

69 (v) Any action, policy or practice constituting a
70 substantial detriment to or interference with the effective job
71 performance of the employee or the health and safety of the
72 employee.

73 (2) "Grievance" does not mean any pension matter or
74 other issue relating to public employees insurance in
75 accordance with article sixteen, chapter five of this code,
76 retirement or any other matter in which the authority to act is
77 not vested with the employer.

78 (j) "Grievance proceeding", "proceeding" or the plural
79 means a conference, level one hearing, mediation, private
80 mediation, private arbitration or level three hearing, or any
81 combination, unless the context clearly indicates otherwise.

82 (k) "Grievant" means an employee or group of similarly
83 situated employees filing a grievance.

84 (l) "Harassment" means repeated or continual
85 disturbance, irritation or annoyance of an employee that is
86 contrary to the behavior expected by law, policy and
87 profession.

88 (m) "Party", or the plural, means the grievant, intervenor,
89 employer and the Director of the Division of Personnel or his
90 or her designee, for state government employee grievances.
91 The Division of Personnel shall not be a party to grievances
92 involving higher education employees.

93 (n) "Representative" means any employee organization,
94 fellow employee, attorney or other person designated by the
95 grievant or intervenor as his or her representative and may
96 not include a supervisor who evaluates the grievant.

97 (o) "Reprisal" means the retaliation of an employer
98 toward a grievant, witness, representative or any other
99 participant in the grievance procedure either for an alleged
100 injury itself or any lawful attempt to redress it.

§6C-2-3. Grievance procedure generally.

1 (a) *Time limits.* --

2 (1) An employee shall file a grievance within the time
3 limits specified in this article.

4 (2) The specified time limits may be extended to a date
5 certain by mutual written agreement and shall be extended
6 whenever a grievant is not working because of accident,
7 sickness, death in the immediate family or other cause for
8 which the grievant has approved leave from employment.

9 (b) *Default.* --

10 (1) The grievant prevails by default if a required response
11 is not made by the employer within the time limits

12 established in this article, unless the employer is prevented
13 from doing so directly as a result of injury, illness or a
14 justified delay not caused by negligence or intent to delay the
15 grievance process.

16 (2) Within ten days of the default, the grievant may file
17 with the chief administrator a written notice of intent to
18 proceed directly to the next level or to enforce the default. If
19 the chief administrator objects to the default, then the chief
20 administrator may, within five days of the filing of the notice
21 of intent, request a hearing before an administrative law
22 judge for the purpose of stating a defense to the default, as
23 permitted by subdivision (1) of this subsection, or showing
24 that the remedy requested by the prevailing grievant is
25 contrary to law or contrary to proper and available remedies.
26 In making a determination regarding the remedy, the
27 administrative law judge shall determine whether the remedy
28 is proper, available and not contrary to law.

29 (3) If the administrative law judge finds that the employer
30 has a defense to the default as permitted by subdivision (1) of
31 this subsection or that the remedy is contrary to law or not
32 proper or available at law, the administrative law judge may
33 deny the default or modify the remedy to be granted to
34 comply with the law or otherwise make the grievant whole.

35 (c) *Defenses and limitations.* --

36 (1) *Untimeliness.* -- Any assertion that the filing of the
37 grievance at level one was untimely shall be made at or
38 before level two.

39 (2) *Back pay.* -- When it is a proper remedy, back pay
40 may only be granted for one year prior to the filing of a
41 grievance, unless the grievant shows, by a preponderance of
42 the evidence, that the employer acted in bad faith in
43 concealing the facts giving rise to the claim for back pay, in
44 which case an eighteen-month limitation on back pay applies.

45 (3) *Statutory defense.* -- If a party intends to assert the
46 application of any statute, policy, rule or written agreement
47 as a defense at any level, then a copy of the materials shall be
48 forwarded to all parties.

49 (d) *Withdrawal and reinstatement of grievance.* -- An
50 employee may withdraw a grievance at any time by filing a
51 written notice of withdrawal with the chief administrator or
52 the administrative law judge. The grievance may not be
53 reinstated by the grievant unless reinstatement is granted by
54 the chief administrator or the administrative law judge. If
55 more than one employee is named as a grievant, the
56 withdrawal of one employee does not prejudice the rights of
57 any other employee named in the grievance.

58 (e) *Consolidation and groups of similarly situated*
59 *employees.* --

60 (1) Grievances may be consolidated at any level by
61 agreement of all parties or at the discretion of the chief
62 administrator or administrative law judge.

63 (2) Class actions are not permitted. However, a
64 grievance may be filed by one or more employees on behalf
65 of a group of similarly situated employees. Any similarly
66 situated employee shall complete a grievance form stating his
67 or her intent to join the group of similarly situated
68 employees. Only one employee filing a grievance on behalf
69 of similarly situated employees shall be required to
70 participate in the conference or level one hearing.

71 (f) *Intervention.* -- Upon a timely request, any employee
72 may intervene and become a party to a grievance at any level
73 when the employee demonstrates that the disposition of the
74 action may substantially and adversely affect his or her rights
75 or property and that his or her interest is not adequately
76 represented by the existing parties.

77 (g) *Representation and disciplinary action.* --

78 (1) An employee may designate a representative who
79 may be present at any step of the procedure as well as at any
80 meeting that is held with the employee for the purpose of
81 discussing or considering disciplinary action.

82 (2) An employee may not be compelled to testify against
83 himself or herself in a disciplinary grievance hearing.

84 (h) *Reprisal.* -- No reprisal or retaliation of any kind may
85 be taken by an employer against a grievant or any other
86 participant in a grievance proceeding by reason of his or her
87 participation. Reprisal or retaliation constitutes a grievance
88 and any person held responsible is subject to disciplinary
89 action for insubordination.

90 (i) *Improper classification.* -- A supervisor or
91 administrator responsible for a willful act of bad faith toward
92 an employee or who intentionally works an employee out of
93 classification may be subject to disciplinary action, including
94 demotion or discharge.

95 (j) *Forms.* -- The board shall create the forms for filing
96 grievances, giving notice, taking appeals, making reports and
97 recommendations and all other necessary documents and
98 provide them to chief administrators to make available to any
99 employee upon request.

100 (k) *Discovery.* -- The parties are entitled to copies of all
101 material submitted to the chief administrator or the
102 administrative law judge by any party.

103 (l) *Notice.* -- Reasonable notice of a proceeding shall be
104 sent at least five days prior to the proceeding to all parties
105 and their representatives and shall include the date, time and
106 place of the proceeding. If an employer causes a proceeding

107 to be postponed without adequate notice to employees who
108 are scheduled to appear during their normal work day, the
109 employees may not suffer any loss in pay for work time lost.

110 (m) *Record.* -- Conferences are not required to be
111 recorded, but all documents admitted and the decision,
112 agreement or report become part of the record. All the
113 testimony at a level one and level three hearing shall be
114 recorded by mechanical means and a copy of the recording
115 provided to any party upon request. The board is responsible
116 for paying for and promptly providing a certified transcript
117 of a level three hearing to the court for a mandamus or
118 appellate proceeding.

119 (n) *Grievance decisions and reports.* --

120 (1) Any party may propose findings of fact and
121 conclusions of law within twenty days of an arbitration or a
122 level three hearing.

123 (2) A decision, agreement or report shall be dated, in
124 writing, setting forth the reasons for the decision or outcome
125 and transmitted to the parties and, in a private arbitration, to
126 the board, within the time limits prescribed. If the grievance
127 is not resolved, the written decision or report shall include the
128 address and procedure to appeal to the next level.

129 (o) *Scheduling.* -- All proceedings shall be scheduled
130 during regular work hours in a convenient location accessible
131 to all parties in accommodation to the parties' normal
132 operations and work schedules. By agreement of the parties,
133 a proceeding may be scheduled at any time or any place.
134 Disagreements shall be decided by the administrative law
135 judge.

136 (p) *Attendance and preparation.* --

137 (1) The grievant, witnesses and an employee
138 representative shall be granted reasonable and necessary time
139 off during working hours to attend grievance proceedings
140 without loss of pay and without charge to annual or
141 compensatory leave credits.

142 (2) In addition to actual time spent attending grievance
143 proceedings, the grievant and an employee representative
144 shall be granted time off during working hours, not to exceed
145 four hours per grievance, for the preparation of the grievance
146 without loss of pay and without charge to annual or
147 compensatory leave credits. However, the first responsibility
148 of any employee is the work assigned to the employee. An
149 employee may not allow grievance preparation and
150 representation activities to seriously affect the overall
151 productivity of the employee.

152 (3) The grievant and an employee representative shall
153 have access to the employer's equipment for purposes of
154 preparing grievance documents subject to the reasonable
155 rules of the employer governing the use of the equipment for
156 nonwork purposes.

157 (4) Disagreements regarding preparation time shall be
158 decided by the administrative law judge.

159 (q) *Grievance files.* --

160 (1) All grievance forms decisions, agreements and reports
161 shall be kept in a file separate from the personnel file of the
162 employee and may not become a part of the personnel file,
163 but shall remain confidential except by mutual written
164 agreement of the parties.

165 (2) The grievant may file a written request to have the
166 grievant's identity removed from any files kept by the
167 employer one year following the conclusion of the grievance.

168 (r) *Number of grievances.* -- The number of grievances
169 filed against an employer by an employee is not, per se, an
170 indication of the employer's or the employee's job
171 performance.

172 (s) *Procedures and rules.* -- The board shall prescribe
173 rules and procedures in compliance with this article, article
174 three of this chapter and the State Administrative Procedures
175 Act under chapter twenty-nine-a of this code for all
176 proceedings relating to the grievance procedure.

§6C-2-4. Grievance procedural levels.

1 (a) *Level one: Chief administrator.* --

2 (1) Within fifteen days following the occurrence of the
3 event upon which the grievance is based, or within fifteen
4 days of the date upon which the event became known to the
5 employee, or within fifteen days of the most recent
6 occurrence of a continuing practice giving rise to a grievance,
7 an employee may file a written grievance with the chief
8 administrator stating the nature of the grievance and the relief
9 requested and request either a conference or a hearing. The
10 employee shall also file a copy of the grievance with the
11 board. State government employees shall further file a copy
12 of the grievance with the Director of the Division of
13 Personnel.

14 (2) *Conference.* -- The chief administrator shall hold a
15 conference within ten days of receiving the grievance. A
16 conference is a private, informal meeting between the
17 grievant and the chief administrator to discuss the issues
18 raised by the grievance, exchange information and attempt to
19 resolve the grievance. The chief administrator may permit
20 other employees and witnesses to attend and participate in a
21 conference to reach a resolution. The chief administrator
22 shall issue a written decision within fifteen days of the
23 conference.

24 (3) *Level one hearing.* -- The chief administrator shall
25 hold a level one hearing within fifteen days of receiving the
26 grievance. A level one hearing is a recorded proceeding
27 conducted in private in which the grievant is entitled to be
28 heard and to present evidence; the formal rules of evidence
29 and procedure do not apply, but the parties are bound by the
30 rules of privilege recognized by law. The parties may present
31 and cross-examine witnesses and produce documents, but the
32 number of witnesses, motions and other procedural matters
33 may be limited by the chief administrator. The chief
34 administrator shall issue a written decision within fifteen
35 days of the level one hearing.

36 (4) An employee may proceed directly to level three upon
37 the agreement of the parties or when the grievant has been
38 discharged, suspended without pay or demoted or reclassified
39 resulting in a loss of compensation or benefits. Level one
40 and level two proceedings are waived in these matters.

41 (b) *Level two: Alternative dispute resolution.* --

42 (1) Within ten days of receiving an adverse written
43 decision at level one, the grievant shall file a written request
44 for mediation, private mediation or private arbitration.

45 (2) *Mediation.* -- The board shall schedule the mediation
46 between the parties within twenty days of the request.
47 Mediation shall be conducted by an administrative law judge
48 pursuant to standard mediation practices and board
49 procedures at no cost to the parties. Parties may be
50 represented and shall have the authority to resolve the
51 dispute. The report of the mediation shall be documented in
52 writing within fifteen days. Agreements are binding and
53 enforceable in this state by a writ of mandamus.

54 (3) *Private mediation.* -- The parties may agree in writing
55 to retain their choice of a private mediator and share the cost.
56 The mediator shall schedule the mediation within twenty

57 days of the written request and shall follow standard
58 mediation practices and any applicable board procedures.
59 Parties may be represented and shall have the authority to
60 resolve the dispute. The report of the mediation shall be
61 documented in writing within fifteen days. Agreements are
62 binding and enforceable in this state by a writ of mandamus.

63 (4) *Private arbitration.* -- The parties may agree, in
64 writing, to retain their choice of a private arbitrator and share
65 the cost. The arbitrator shall schedule the arbitration within
66 twenty days of the written request and shall follow standard
67 arbitration practices and any applicable board procedures.
68 The arbitrator shall render a decision in writing to all parties,
69 setting forth findings of fact and conclusions of law on the
70 issues submitted within thirty days following the arbitration.
71 An arbitration decision is binding and enforceable in this
72 state by a writ of mandamus. The arbitrator shall inform the
73 board, in writing, of the decision within ten days.

74 (c) *Level three hearing.* --

75 (1) Within ten days of receiving a written report stating
76 that level two was unsuccessful, the grievant may file a
77 written appeal with the employer and the board requesting a
78 level three hearing on the grievance. State government
79 employees shall further file a copy of the grievance with the
80 Director of the Division of Personnel.

81 (2) The administrative law judge shall conduct all
82 proceedings in an impartial manner and shall ensure that all
83 parties are accorded procedural and substantive due process.

84 (3) The administrative law judge shall schedule the level
85 three hearing and any other proceedings or deadlines within
86 a reasonable time in consultation with the parties. The
87 location of the hearing and whether the hearing is to be made
88 public are at the discretion of the administrative law judge.

89 (4) The administrative law judge may issue subpoenas for
90 witnesses, limit witnesses, administer oaths and exercise
91 other powers granted by rule or law.

92 (5) Within thirty days following the hearing or the receipt
93 of the proposed findings of fact and conclusions of law, the
94 administrative law judge shall render a decision in writing to
95 all parties setting forth findings of fact and conclusions of
96 law on the issues submitted.

97 (6) The administrative law judge may make a
98 determination of bad faith and, in extreme instances, allocate
99 the cost of the hearing to the party found to be acting in bad
100 faith. The allocation of costs shall be based on the relative
101 ability of the party to pay the costs.



CHAPTER 176

**(Com. Sub. for H.B. 4094 - By Mr. Speaker, Mr. Thompson, and
Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §6C-4-1, §6C-4-2
and §6C-4-3, all relating to reimbursement of compensation
paid to certain state employees for training, education and
professional development; defining terms; requiring division of
personnel propose rules for legislative approval; and setting
forth exemptions.

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 §6C-4-1, §6C-4-2 and §6C-4-3, all to read as follows:

**ARTICLE 4. COMPENSATION TO STATE EMPLOYEES
FOR TRAINING, EDUCATION AND
PROFESSIONAL DEVELOPMENT.**

§6C-4-1. Definitions.

§6C-4-2. Agreement to reimburse state agencies for training compensation paid to employees; rule-authority.

§6C-4-3. Exemptions.

§6C-4-1. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Advanced professional development training” means
5 any academy, class, conference, course, program, seminar or
6 training attended by an employee that:

7 (1) Is not required by his or her current position;

8 (2) Is not required for the performance of his or her
9 current job responsibilities; and

10 (3) Is intended to develop a higher level of skill, to
11 develop an increase in professional or technical knowledge,
12 or to obtain an advanced level of professional accreditation.

13 “Advanced professional development training” does not
14 include routine job training, training required for the
15 employee’s performance of his or her current job
16 responsibilities, attendance at professional conventions,
17 seminars, continuing professional education or any form of
18 training required to renew an employee’s professional

19 accreditation or any training costing less than one thousand
20 dollars.

21 (b) “Agency” means an administrative unit of state
22 government, including, without limitation, any authority,
23 board, bureau, commission, committee, council, division,
24 section, or office within the executive branch of state
25 government.

26 (c) “Continuing professional education” means
27 educational courses, seminars, lectures or programs
28 necessary to maintain or renew an employee’s professional
29 accreditation.

30 (d) “Employee” means any person who performs a full or
31 part-time service for wages, salary, or other remuneration
32 under a contract for hire, written or oral, express or implied,
33 for an agency and receives advanced professional
34 development training after the effective date of this article.

35 (e) “Professional accreditation” means any certification,
36 degree, advanced degree, endorsement or occupational
37 license.

38 (f) “Training compensation” means tuition and expenses,
39 paid to an or on the behalf of an employee for advanced
40 professional development training.

**§6C-4-2. Agreements to reimburse state agencies for training
compensation paid to employees; rule-authority.**

1 (a) Notwithstanding any other provision of this code to
2 the contrary, an agency may require an employee to enter
3 into a written reimbursement agreement to repay training
4 compensation.

5 (b) If an employee voluntarily leaves employment with
6 the agency within one year after receiving advanced
7 professional development training and becomes employed
8 within one year with an entity other than the State of West
9 Virginia, in a capacity which utilizes the advanced
10 professional development training, the employee shall repay
11 a pro rata portion of the training compensation as provided in
12 the reimbursement agreement.

13 (c) The Division of Personnel shall propose rules for
14 legislative approval, in accordance with the provisions of
15 article three, chapter twenty-nine-a of this code, to set forth
16 a standard reimbursement agreement form which provides
17 the following minimum requirements:

18 (1) Providing general contract language including terms
19 and conditions of repayment;

20 (2) Specifying types of advanced professional
21 development training;

22 (3) Requiring service no longer than one year;

23 (4) Permitting and describing the circumstances when an
24 agency may withhold prorated amounts from any final
25 payments due and owing to the employee; and

26 (5) Providing exceptions for an employee who becomes
27 injured or ill and can no longer perform his or her assigned
28 job functions.

§6C-4-3. Exemptions.

1 (a) The provisions of this article do not apply to:

2 (1) Training offered to a member of the West Virginia
3 State Police during his or her participation in the West

4 Virginia State Police Cadet Training Program in accordance
5 with the provisions of subsection (i), section five, article two,
6 chapter fifteen of this code;

7 (2) A member of the West Virginia National Guard; and

8 (3) Employees of the Legislature, the Supreme Court of
9 Appeals, the Attorney General, the Secretary of State, the
10 Auditor, the Treasurer and the Commissioner of Agriculture.



CHAPTER 177

**(Com. Sub. for H.B. 4328 - By Delegates Caputo, Webster,
Brown, Doyle, Ellem, Fleischauer, Hamilton, Mahan, Miley,
Moore and Varner)**

[Passed March 5, 2008; in effect from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §29-6-20 of the Code of West Virginia, 1931, as amended, relating to allowing state employees to serve as poll workers and as delegates to state and national political conventions without being considered as engaging in a prohibited political activity.

Be it enacted by the Legislature of West Virginia:

That §29-6-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to or
2 demoted or dismissed from any position in the classified
3 service or in any way favored or discriminated against with
4 respect to such employment because of his or her political or
5 religious opinions or affiliations or race; but nothing herein
6 shall be construed as precluding the dismissal of any
7 employee who may be engaged in subversive activities or
8 found disloyal to the nation.

9 (b) No person shall seek or attempt to use any political
10 endorsement in connection with any appointment in the
11 classified service.

12 (c) No person shall use or promise to use, directly or
13 indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure for
15 any person an appointment or advantage in appointment to a
16 position in the classified service, or an increase in pay or
17 other advantage in employment in any such position, for the
18 purpose of influencing the vote or political action of any
19 person or for any consideration.

20 (d) No employee in the classified service or member of
21 the board or the director shall, directly or indirectly, solicit or
22 receive any assessment, subscription or contribution, or
23 perform any service for any political party, committee or
24 candidate for compensation, other than for expenses actually
25 incurred, or in any manner take part in soliciting any such
26 assessment, subscription, contribution or service of any
27 employee in the classified service.

28 (e) Notwithstanding any other provision of this code, no
29 employee in the classified service shall:

30 (1) Use his or her official authority or influence for the
31 purpose of interfering with or affecting the result of an
32 election or a nomination for office;

33 (2) Directly or indirectly coerce, attempt to coerce,
34 command or advise a state or local officer or employee to
35 pay, lend or contribute anything of value to a party,
36 committee, organization, agency or person for political
37 purposes; or

38 (3) Be a candidate for any national or state paid public
39 office or court of record; or hold any paid public office other
40 than as a paid poll clerk or worker; or be a member of any
41 national, state or local committee of a political party, or a
42 financial agent or treasurer within the meaning of the
43 provisions of section three, four or five-e, article eight,
44 chapter three of this code. Other types of partisan or
45 nonpartisan political campaigning and management not
46 inconsistent with the provisions of this subdivision and with
47 the provisions of subsection (d) of this section shall be
48 permitted.

49 (f) Political participation pertaining to constitutional
50 amendments, referendums, approval of municipal ordinances
51 or activities, serving as a poll clerk or worker or being a
52 candidate for or serving as a delegate to any state or national
53 political party convention shall not be deemed to be
54 prohibited by the foregoing provisions of this section.

55 (g) Any classified employee who becomes a candidate for
56 any paid public office as permitted by this section shall be
57 placed on a leave of absence without pay for the period of
58 such candidacy, commencing upon the filing of the certificate
59 of candidacy.

CHAPTER 178

(H.B. 4670 - By Delegates White, Kominar and Iaquina)

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §5-16-18 of the Code of West Virginia, 1931, as amended, relating to authorizing the Public Employees Insurance Agency to charge interest to employers on amounts not paid timely.

Be it enacted by the Legislature of West Virginia:

That §5-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

1 (a) All employers operating from state general revenue or
2 special revenue funds or federal funds or any combination of
3 those funds shall budget the cost of insurance coverage
4 provided by the Public Employees Insurance Agency to
5 current and retired employees of the employer as a separate
6 line item, titled "PEIA", in its respective annual budget and
7 are responsible for the transfer of funds to the director for the
8 cost of insurance for employees covered by the plan. Each
9 spending unit shall pay to the director its proportionate share
10 from each source of funds. Any agency wishing to charge

11 General Revenue Funds for insurance benefits for retirees
12 under section thirteen of this article shall provide
13 documentation to the director that the benefits cannot be paid
14 for by any special revenue account or that the retiring
15 employee has been paid solely with General Revenue Funds
16 for twelve months prior to retirement.

17 (b) If the general revenue appropriation for any employer,
18 excluding county boards of education, is insufficient to cover
19 the cost of insurance coverage for the employer's
20 participating employees, retired employees and surviving
21 dependents, the employer shall pay the remainder of the cost
22 from its "personal services" or "unclassified" line items. The
23 amount of the payments for county boards of education shall
24 be determined by the method set forth in section twenty-four,
25 article nine-a, chapter eighteen of this code: *Provided*, That
26 local excess levy funds shall be used only for the purposes
27 for which they were raised: *Provided, however*, That after
28 approval of its annual financial plan, but in no event later
29 than the thirty-first day of December of each year, the finance
30 board shall notify the Legislature and county boards of
31 education of the maximum amount of employer premiums
32 that the county boards of education shall pay for covered
33 employees during the following fiscal year.

34 (c) All other employers not operating from the state
35 General Revenue Fund shall pay to the director their share of
36 premium costs from their respective budgets. The finance
37 board shall establish the employers' share of premium costs
38 to reflect and pay the actual costs of the coverage including
39 incurred but not reported claims.

40 (d) The contribution of the other employers (namely: A
41 county, city or town) in the state; any separate corporation or
42 instrumentality established by one or more counties, cities or
43 towns, as permitted by law; any corporation or
44 instrumentality supported in most part by counties, cities or

45 towns; any public corporation charged by law with the
46 performance of a governmental function and whose
47 jurisdiction is coextensive with one or more counties, cities
48 or towns; any comprehensive community mental health
49 center or comprehensive mental retardation facility
50 established, operated or licensed by the Secretary of Health
51 and Human Resources pursuant to section one, article two-a,
52 chapter twenty-seven of this code, and which is supported in
53 part by state, county or municipal funds; and a combined
54 city-county health department created pursuant to article two,
55 chapter sixteen of this code for their employees shall be the
56 percentage of the cost of the employees' insurance package
57 as the employers determine reasonable and proper under their
58 own particular circumstances.

59 (e) The employee's proportionate share of the premium
60 or cost shall be withheld or deducted by the employer from
61 the employee's salary or wages as and when paid and the
62 sums shall be forwarded to the director with any supporting
63 data as the director may require.

64 (f) All moneys received by the Public Employees
65 Insurance Agency shall be deposited in a special fund or
66 funds as are necessary in the State Treasury and the Treasurer
67 of the state is custodian of the fund or funds and shall
68 administer the fund or funds in accordance with the
69 provisions of this article or as the director may from time to
70 time direct. The Treasurer shall pay all warrants issued by
71 the State Auditor against the fund or funds as the director
72 may direct in accordance with the provisions of this article.
73 All funds received by the agency, including, but not limited
74 to, basic insurance premiums, administrative expenses and
75 optional life insurance premiums, shall be deposited, as
76 determined by the director, in any of the investment pools
77 with the West Virginia Investment Management Board,
78 including, but not limited to, the equity and fixed income
79 pools, with the interest income or other earnings a proper

80 credit to all such funds for the benefit of the Public
81 Employees Insurance Agency.

82 (g) The Public Employees Insurance Agency may recover
83 an additional interest amount from any employer that fails to
84 pay in a timely manner any premium or minimum annual
85 employer payment, as defined in article sixteen-d of this
86 chapter, which is due and payable to the Public Employees
87 Insurance Agency or the Retiree Health Benefit Trust. The
88 agency may recover the amount due plus an additional
89 amount equal to two and one half percent per annum of the
90 amount due. Accrual of interest owed by the delinquent
91 employer commences upon the thirty-first day following the
92 due date for the amount owed and shall continue until receipt
93 by the Public Employees Insurance Agency of the delinquent
94 payment. Interest shall compound every thirty days.

CHAPTER 179

(H.B. 4676 - By Delegates Kominar, Iaquina and Perdue)

[Passed February 29, 2008; in effect July 1, 2008.]

[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §11B-2-15 of the Code of West Virginia, 1931, as amended, relating to continuing the permissible annual appropriation of Public Employees Insurance Reserve Fund moneys for the bureau for medical services of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §11B-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15. Reserves for public employees insurance program.

1 (a) There is hereby continued a special revenue account
2 in the State Treasury, designated the "Public Employees
3 Insurance Reserve Fund", which is an interest-bearing
4 account and may be invested in accordance with the
5 provisions of article six, chapter twelve of this code, with the
6 interest income a proper credit to the fund.

7 (b) The fund shall consist of moneys appropriated by the
8 Legislature and moneys transferred annually pursuant to the
9 provisions of subsection (c) of this section. These moneys
10 shall be held in reserve and appropriated by the Legislature
11 only for the support of the programs provided by the Public
12 Employees Insurance Agency: *Provided*, That the moneys
13 held in the fund may be appropriated to the bureau for
14 medical services of the Department of Health and Human
15 Resources.

16 (c) Annually each state agency, except for the higher
17 education central office created in article four, chapter
18 eighteen-b of this code; the higher education governing
19 boards as defined in articles two and three of said chapter;
20 and the state institutions of higher education as defined in
21 section two, article one of said chapter shall transfer one
22 percent of its annualized expenditures from state funds,
23 excluding federal funds based on filled full-time equivalents
24 as determined by the state budget office as of the first day of
25 April for that fiscal year, to the Public Employees Insurance
26 Reserve Fund. The secretary may exempt that transfer only
27 upon a showing by the requesting agency that the continued
28 operation of that agency is dependent upon receipt of the
29 exemption.

30 (d) Annually the secretary shall provide a report to the
31 Governor and the Legislature on the amount of reserves
32 established pursuant to the provisions of this section, the
33 number of exemptions granted and the agencies receiving
34 those exemptions.

CHAPTER 180

(Com. Sub. for H.B. 4692 - By Delegates White and Kominar)

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §12-1-4 and §12-1-5 of the Code of West Virginia, 1931, as amended, all relating to giving depositories of state moneys authority to place deposits of those moneys in certificates of deposit which meet certain requirements in lieu of providing a bond or security; and permitting depositories of state moneys to insure such deposits in excess of the amount insured by an agency of the federal government with a deposit guaranty bond issued by a bankers surety company.

Be it enacted by the Legislature of West Virginia:

That §12-1-4 and §12-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

§12-1-5. Limitation on amount of deposits.

§12-1-4. Bonds to be given by depositories.

1 (a) Before allowing any money to be deposited with any
2 eligible depository in excess of the amount insured by an
3 agency of the federal government or insured by a deposit
4 guaranty bond issued by a valid bankers surety company
5 acceptable to the treasurer, the State Treasurer shall require
6 the depository to give a collaterally secured bond, in the
7 amount of not less than ten thousand dollars, payable to the
8 State of West Virginia, conditioned upon the prompt
9 payment, whenever lawfully required, of any state money, or
10 part thereof, that may be deposited with that depository, or of
11 any accrued interest on deposits. The bond shall be a
12 continuous bond but may be increased or decreased in
13 amount or replaced by a new bond with the approval of the
14 State Treasurer. The collateral security for the bond shall
15 consist of bonds of the United States, or bonds or letters of
16 credit of the federal land banks, of the federal home loan
17 banks, or bonds of the State of West Virginia or of any
18 county, district or municipality of this state, or other bonds,
19 letters of credit, or securities approved by the treasurer. All
20 bonds so secured are here designated as collaterally secured
21 bonds. Withdrawal or substitution of any collateral pledged
22 as security for the performance of the conditions of the bond
23 may be permitted with the approval in writing of the
24 treasurer. All depository bonds shall be recorded by the
25 treasurer in a book kept in his or her office for the purpose,
26 and a copy of the record, certified by the treasurer, shall be
27 prima facie evidence of the execution and contents of the
28 bond in any suit or legal proceeding. All collateral securities
29 shall be delivered to or deposited for the account of the
30 treasurer of the State of West Virginia and in the event said
31 securities are delivered to the treasurer, he or she shall
32 furnish a receipt therefor to the owner thereof. The treasurer
33 and his or her bondsmen shall be liable to any person for any
34 loss by reason of the embezzlement or misapplication of the
35 securities by the treasurer or any of his or her employees, and
36 for the loss thereof due to his or her negligence or the
37 negligence of his or her employees; and the securities shall be
38 delivered to the owner thereof when liability under the bond
39 which they are pledged to secure has terminated. The

40 treasurer may permit the deposit under proper receipt of the
41 securities with one or more banking institutions within or
42 outside the State of West Virginia and may contract with any
43 institution for safekeeping and exchange of any collateral
44 securities and may prescribe the rules for handling and
45 protecting the collateral securities.

46 (b) A banking institution is not required to provide a
47 bond or security in lieu of bond if the deposits accepted are
48 placed in certificates of deposit meeting the following
49 requirements: (1) The funds are invested through a
50 designated state depository selected by the treasurer; (2) the
51 selected depository arranges for the deposit of the funds in
52 certificates of deposit in one or more banks or savings and
53 loan associations wherever located in the United States, for
54 the account of the state; (3) the full amount of principal and
55 accrued interest of each certificate of deposit is insured by the
56 Federal Deposit Insurance Corporation; (4) the selected
57 depository acts as custodian for the state with respect to such
58 certificates of deposit issued for the state's account; and (5)
59 at the same time that the state's funds are deposited and the
60 certificates of deposit are issued, the selected depository
61 receives an amount of deposits from customers of other
62 financial institutions wherever located in the United States
63 equal to or greater than the amount of the funds invested by
64 the state through the selected depository.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any depository in
2 excess of either the amount insured by an agency of the
3 federal government or the amount insured by a deposit
4 guaranty bond issued by a valid bankers surety company
5 acceptable to the treasurer shall not exceed ninety percent of
6 the value of collateral pledged on the collaterally secured
7 bond given by the depository. The value of the collateral
8 shall be determined by the treasurer.

CHAPTER 181

**(Com. Sub. for H.B. 4018 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend and reenact §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, all relating to the renewal of the West Virginia Small Business Linked Deposit Program.

Be it enacted by the Legislature of West Virginia:

That §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

- §12-1A-1. Definitions.
- §12-1A-3. Limitations on investment in linked deposit.
- §12-1A-4. Application for loan priority; loan package; counseling.
- §12-1A-5. Acceptance or rejection of loan package; deposit agreement for linked deposits.
- §12-1A-6. Certification and monitoring of compliance; accountability and reporting.
- §12-1A-9. Effective dates.

§12-1A-1. Definitions.

- 1 (a) “Treasurer” means the West Virginia Treasurer’s
- 2 Office.

3 (b) “Eligible small business” means any business that:
4 (1) Employs fifty or fewer employees and has gross annual
5 receipts of five million dollars or less; (2) is headquartered in
6 this state; (3) is organized for profit; and (4) complies with
7 the terms and conditions of this article regarding eligibility.

8 (c) “Eligible lending institution” means a financial
9 institution that is eligible to make commercial loans, is a
10 public depository of state funds and agrees to participate in
11 the linked deposit program and comply with its terms and
12 conditions.

13 (d) “Linked deposit” means a deposit placed by the
14 Treasurer with an eligible lending institution that agrees to
15 lend a linked deposit loan to an eligible small business. The
16 amount of the deposit is equal to the amount of the linked
17 deposit loan at an interest rate of three percent below the
18 current market rate as determined and calculated by the
19 Treasurer, but in no event may the interest rate on the deposit
20 be less than zero percent. The linked deposit may be placed
21 with the eligible lending institution for up to seven years
22 depending upon whether the small business remains eligible
23 for the program. On an annual date, as determined by the
24 Treasurer, the rate paid to the Treasurer shall be recomputed
25 based upon the current market rate. If the rate is recomputed,
26 the amount of the deposit shall be reduced by the amount of
27 principal paid on the outstanding loan.

28 (e) “Linked deposit loan” means a loan between an
29 eligible lending institution and an eligible small business for
30 an amount not to exceed two hundred fifty thousand dollars
31 at a rate of not more than one percent above the prime
32 interest rate as published by the Wall Street Journal on the
33 date the Treasurer receives the linked deposit request. In
34 exchange for providing this reduced rate loan, the eligible
35 lending institution receives a linked deposit. On an annual
36 date, as determined by the Treasurer, the rate charged to the

37 eligible small business may be recomputed but shall not
38 exceed the prime interest rate plus one percent. If the rate is
39 recomputed, the amount of the deposit shall be reduced by
40 the amount of principal paid on the outstanding loan. The
41 linked deposit loan may be part of a comprehensive loan
42 package, including guaranteed loans by the United States
43 small business administration, or other federal or state agency
44 providing a partial or full guarantee against loss to the
45 eligible lending institution.

46 (f) "Small Business Development Center" means the
47 West Virginia Small Business Development Center, a
48 division of the West Virginia Development Office.

§12-1A-3. Limitations on investment in linked deposits.

1 The Treasurer shall invest in linked deposits. The total
2 amount deposited at any one time shall not exceed, in the
3 aggregate, twenty million dollars. When deciding how much
4 to invest in linked deposits, the Treasurer shall give priority
5 to the investment, liquidity and cash flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

1 (a) An eligible lending institution that desires to
2 participate in the linked deposit program shall accept and
3 review loan applications from eligible small businesses that
4 have been prepared with the advice of the Small Business
5 Development Center. The lending institution shall apply all
6 usual lending standards to determine the credit worthiness of
7 each eligible small business and whether the loan application
8 meets the criteria established in this article.

9 (b) An eligible small business shall certify on its loan
10 application that: (1) The small business is in good standing
11 with the State Tax Division, the Workers' Compensation
12 Commission and the Bureau of Employment Programs as of

13 the date of the application; (2) the linked deposit loan will be
14 used to create new jobs or preserve existing jobs and
15 employment opportunities; and (3) the linked deposit loan
16 shall not be used to refinance an existing debt.

17 (c) In considering which eligible small businesses should
18 receive linked deposit loans, the eligible lending institution
19 shall give priority to the economic needs of the area in which
20 the business is located, the number of jobs to be created and
21 preserved by the receipt of the loan, the reasonable ability of
22 the small business to repay the loan and other factors
23 considered appropriate by the eligible financial institution.

24 (d) A small business receiving a linked deposit loan shall
25 receive supervision and counseling provided by the small
26 business development center when applying for the loan. The
27 services available from the Small Business Development
28 Center include eligibility certification, business planning,
29 quarterly financial statement review and loan application
30 assistance. The State Tax Division, the Bureau of
31 Employment Programs and the Workers' Compensation
32 Commission shall provide the Small Business Development
33 Center with information as to the standing of each small
34 business loan applicant. The Small Business Development
35 Center shall include these certifications with the loan
36 application.

37 (e) After all approvals of the Small Business
38 Development Center and the financial institution have been
39 given for a linked deposit loan, the Small Business
40 Development Center and the financial institution shall
41 forward to the Treasurer a linked deposit loan request in the
42 form and manner prescribed by the Treasurer. The Treasurer
43 shall notify the Small Business Development Center when
44 the linked deposit is made.

**§12-1A-5. Acceptance or rejection of loan package; deposit
agreement for linked deposits.**

1 (a) The Treasurer may accept or reject a linked deposit
2 loan request or any portion of a request based on the criteria
3 prescribed by this article.

4 (b) Upon approving the linked deposit loan request, the
5 Treasurer shall place a linked deposit with the lending
6 institution.

7 (c) The eligible lending institution shall enter into a
8 deposit agreement with the Treasurer in a form prescribed by
9 the Treasurer and in compliance with the requirements of this
10 article.

**§12-1A-6. Certification and monitoring of compliance;
accountability and reporting.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, the institution shall lend the funds
3 to the approved eligible small business listed in the linked
4 deposit loan package. A certification of compliance with this
5 section shall be sent to the Small Business Development
6 Center by the eligible lending institution.

7 (b) As a condition of remaining in good standing with
8 the lending institution and the state and as a condition of
9 having the loan for up to seven years, the loan recipient shall
10 receive supervision and counseling provided by the Small
11 Business Development Center. Eligible small businesses
12 shall also grant the lending institution the right to provide
13 information on the status of the loan to the Small Business
14 Development Center so as to assist the small business.

15 (c) The Small Business Development Center shall take
16 any and all steps necessary to implement, advertise and
17 monitor compliance with the linked deposit program.

18 (d) By the thirty-first day of January of each year, the
19 Small Business Development Center shall report on the

20 linked deposit program for the preceding calendar year to the
21 West Virginia Development Office, which shall then report
22 to the Joint Committee on Government and Finance. The
23 reports shall set forth the name of the small business, terms,
24 delinquency and default rates, job growth, gross income
25 evaluation and amounts of the loans upon which the linked
26 deposits were based.

§12-1A-9. Effective dates.

1 This article shall be effective from the amendment and
2 reenactment of this article during the regular session of the
3 Legislature in two thousand eight, through the first day of
4 July, two thousand thirteen.



CHAPTER 182

**(Com. Sub. for H.B. 4290 - By Delegates Swartzmiller, Stalnaker,
Kominar, Varner, Manchin, Palumbo, Pino, Caputo and Browning)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §12-3A-2 and §12-3A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §12-3A-7, all relating to electronic commerce; granting the Auditor and Treasurer the discretion to require certain electronic filing, with waivers and exceptions; and authorizing the use of electronic commerce in the sale or disposal of property.

Be it enacted by the Legislature of West Virginia:

That §12-3A-2 and §12-3A-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 §12-3A-7, all to read as follows:

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-2. Definitions.

§12-3A-3. Financial electronic commerce.

§12-3A-7. Method of sale or disposal of personal property.

§12-3A-2. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) "Document" means any authentication, certificate,
5 claim, form, invoice, record, report, requisition, security,
6 statement or other similar item that may be in a tangible or
7 electronic form.

8 (b) "Electronic" means electrical, digital, magnetic,
9 wireless, optical, electromagnetic, biometric, or any other
10 technology that is similar to these technologies.

11 (c) "Electronic commerce" means using electronic
12 techniques for accomplishing business transactions, including
13 electronic mail or messaging, electronic bulletin board,
14 Internet technology, electronic funds transfers, electronic data
15 interchange (EDI) techniques, and any other related
16 electronic technologies.

17 (d) "Security procedure" means a methodology or
18 procedure for the purpose of:

19 (1) Preventing access by unauthorized parties;

20 (2) Verifying that an electronic record or electronic
21 signature is that of a specific party or created by a specific
22 electronic point of origin; or

23 (3) Detecting error or alteration in the communication,
24 content, or storage of an electronic record since a specific
25 point in time.

26 (e) "WEB commerce" means electronic commerce on the
27 Internet.

§12-3A-3. Financial electronic commerce.

1 (a) The State Auditor and the State Treasurer shall
2 implement electronic commerce capabilities for each of their
3 offices to facilitate the performance of their duties under this
4 code. The State Treasurer shall competitively bid the
5 selection of vendors needed to provide the necessary
6 banking, investment and related goods and services, and the
7 provisions of article one-b, chapter five, and articles three
8 and seven, chapter five-a of this code shall not apply, unless
9 requested by the State Auditor or State Treasurer.

10 (b) A document or a signature received, issued or used by
11 the Auditor or the Treasurer shall be considered an original
12 and may not be denied legal effect on the ground that it is in
13 electronic form.

14 (c) The Auditor or Treasurer may, in his or her discretion,
15 require documents filed with or submitted to his or her
16 respective office be filed or submitted in a prescribed
17 electronic format.

18 (d) The Auditor or Treasurer, in his or her discretion,
19 may waive:

20 (1) Any requirements for a document filed or submitted
21 in an electronic format; or

22 (2) Any requirements for the certification, notarization or
23 verification of a document filed or submitted in an electronic
24 format.

25 (e) The head of each spending unit is responsible for
26 adopting and implementing security procedures to ensure
27 adequate integrity, security, confidentiality, and auditability
28 of the business transactions of his or her spending unit when
29 utilizing electronic commerce.

§12-3A-7. Method of sale or disposal of personal property.

1 (a) Notwithstanding any other provision in this code to
2 the contrary, the Treasurer, or any other state spending unit
3 that has the authority to sell or dispose of personal property
4 in its possession, may do so by using electronic commerce.

5 (b) The sale of property by the Treasurer, or other state
6 spending unit, by using electronic commerce is, for all
7 purposes, deemed a sale of personal property within the State
8 of West Virginia.

CHAPTER 183

**(Com. Sub. for H.B. 4287 - By Delegates White, Swartzmiller,
Yost, Stalnaker, Kominar, Varner, Manchin, Palumbo, Pino,
Caputo and Browning)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §12-6-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-6C-6 of said code, all relating to clarifying that the funds, pools and securities maintained or invested in by the West

Virginia Investment Management Board and the West Virginia Board of Treasury Investments are authorized investments for all local government funds.

Be it enacted by the Legislature of West Virginia:

That §12-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §12-6C-6 of said code be amended and reenacted, all to read as follows:

Article

6. West Virginia Investment Management Board.

6C. West Virginia Board of Treasury Investments.

**ARTICLE 6. WEST VIRGINIA INVESTMENT
MANAGEMENT BOARD.**

§12-6-8. Investment funds established; management thereof.

1 (a) There is continued a special investment fund
2 designated as the Consolidated Fund. Effective the thirtieth
3 day of June, two thousand five, the power and authority of
4 the board as to the consolidated fund terminates. On the first
5 day of July, two thousand five, the board shall transfer the
6 consolidated fund, all moneys, obligations, assets, securities
7 and other investments of the consolidated fund and all
8 records, properties and any other document or item pertaining
9 to the consolidated fund in its possession or under its control
10 to the West Virginia Board of Treasury Investments
11 established in article six-c of this chapter.

12 (b) Each board, commission, department, official or
13 agency charged with the administration of state funds may
14 request the State Treasurer to make moneys available to the
15 board for investment.

16 (c) Each political subdivision of this state through its
17 treasurer or equivalent financial officer may enter into

18 agreements with the State Treasurer for the investment of
19 moneys of the political subdivision. Any political
20 subdivision may enter into an agreement with a state
21 spending unit from which it receives funds to request transfer
22 of the funds to their investment account with the Investment
23 Management Board or the West Virginia Board of Treasury
24 Investments.

25 (d) Moneys held in the various funds and accounts
26 administered by the board shall be invested as permitted by
27 this article and subject to the restrictions contained in this
28 article. The board shall report the earnings on the various
29 funds under management to the State Treasurer at the times
30 determined by the State Treasurer. The board shall also
31 establish rules for the administration of the various funds and
32 accounts established by this section as it considers necessary
33 for the administration of the funds and accounts, including,
34 but not limited to: (1) The specification of amounts which
35 may be deposited in any fund or account and minimum
36 periods of time for which deposits will be retained; and (2)
37 creation of reserves for losses: *Provided*, That in the event
38 any moneys made available to the board may not lawfully be
39 combined for investment or deposited in the consolidated
40 funds established by this section, the board may create
41 special accounts and may administer and invest those moneys
42 in accordance with the restrictions specially applicable to
43 those moneys.

44 (e) Notwithstanding any provision of this code to the
45 contrary, the funds, pools and securities maintained or
46 invested in by the board in accordance with this article are
47 authorized investments for all local government funds.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-6. Consolidated fund continued; management.

1 (a) The consolidated fund is continued and
2 notwithstanding any provision of this code to the contrary is
3 vested in the West Virginia Board of Treasury Investments
4 on the first day of July, two thousand five.

5 (b) Each spending unit authorized to invest moneys shall
6 unless prohibited by law, request the State Treasurer to invest
7 its moneys. Based upon spending unit representations, the
8 State Treasurer shall send the moneys to the West Virginia
9 Board of Treasury Investments or to the Investment
10 Management Board for investment.

11 (c) Each political subdivision of this state through its
12 treasurer or equivalent financial officer may enter into
13 agreements with the State Treasurer for the investment of
14 moneys of the political subdivision. Any political
15 subdivision may enter into an agreement with the state
16 spending unit from which it receives moneys to allow the
17 board to invest the moneys.

18 (d) Moneys held in the various funds and accounts
19 administered by the board are invested as permitted by this
20 article and subject to the restrictions contained in this article.

21 (e) The State Treasurer shall maintain records of the
22 deposits and withdrawals of each participant and the
23 performance of the various funds, pools and accounts. The
24 board shall report the earnings on the funds, pools, and
25 accounts under management to the State Treasurer at the
26 times determined by the State Treasurer.

27 (f) The board shall establish policies for the
28 administration of the various funds, pools and accounts
29 authorized by this article as it determines necessary. The
30 policies may specify the minimum amounts and timing of
31 deposits and withdrawals and any other matters authorized by
32 the board.

33 (g) Notwithstanding any provision of this code to the
34 contrary, the funds, pools and securities maintained or
35 invested in by the board in accordance with this article are
36 authorized investments for all local government funds.



CHAPTER 184

**(Com. Sub. for H.B. 4476 - By Delegates Hrutkay, Tucker, Martin,
Swartzmiller, D. Poling, Stalnaker and Craig)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-27-1, §17-27-2, §17-27-3, §17-27-4, §17-27-5, §17-27-6, §17-27-7, §17-27-8, §17-27-9, §17-27-10, §17-27-11, §17-27-12, §17-27-13, §17-27-14, §17-27-15, §17-27-16, §17-27-17 and §17-27-18, all relating to establishment of the Public-Private Transportation Facilities Act; setting forth legislative findings and purposes; defining terms; providing prerequisites for acquiring, constructing or improving of a transportation facility; creating public-private transportation oversight within the Division of Highways; creating the powers and duties of the division and any other agencies that are part of the department; providing for the submission of proposals and approval by the division; providing for service contracts; providing for the dedication of public property; setting forth the powers and duties of a developer; requiring a comprehensive agreement; requiring that comprehensive agreement be adopted by the Legislature by concurrent resolution; requiring yeas and nays to be entered in journal; providing for federal, state and local assistance; addressing the issues of material default and

remedies; prohibiting governmental entities from pledging full faith and credit; providing for the exercise of condemnation; addressing utility crossings and relocations; addressing dedication of assets; qualifying transportation facilities as public improvements; providing for an exemption of qualifying transportation facilities from taxation; addressing liberal construction and application of article; and requiring approval of Governor.

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 §17-27-1, §17-27-2, §17-27-3, §17-27-4, §17-27-5, §17-27-6, §17-27-7, §17-27-8, §17-27-9, §17-27-10, §17-27-11, §17-27-12, §17-27-13, §17-27-14, §17-27-15, §17-27-16, §17-27-17 and §17-27-18, all to read as follows:

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

- §17-27-1. Legislative findings and purposes.
- §17-27-2. Definitions.
- §17-27-3. Prerequisites for development.
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§17-27-1. Legislative findings and purposes.

1 The Legislature finds and declares:

2 (1) That there is a public need for timely acquisition or
3 construction of and improvements to transportation facilities
4 within the state that are compatible with state and local
5 transportation plans;

6 (2) That public need may not be wholly satisfied by
7 existing ways in which transportation facilities are acquired,
8 constructed or improved;

9 (3) That authorizing private entities to acquire, construct
10 or improve one or more transportation facilities may result in
11 the availability of transportation facilities to the public in a
12 more timely or less costly manner, thereby serving the public
13 health, safety, convenience and welfare and the enhancement
14 of the residential, agricultural, recreational, economic,
15 commercial and industrial opportunities;

16 (4) That providing a mechanism for the solicitation,
17 receipt and consideration of proposals submitted by private
18 entities for the purposes described in this section serves the
19 public purpose of this article to the extent that the action
20 facilitates the timely acquisition or construction of or
21 improvement to a qualifying transportation facility or the
22 continued operation of a qualifying transportation facility;
23 and

24 (5) That providing for the expansion and acceleration of
25 transportation financing using innovative financing
26 mechanisms, including, but not limited to, design-build
27 contracting and financing arrangements, will add to the
28 convenience of the public and allow public and private
29 entities to have the greatest possible flexibility in contracting
30 with each other for the provision of the public services which
31 are the subject of this article.

§17-27-2. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings:

3 (1) “Comprehensive agreement” means the
4 comprehensive agreement by and between a developer and
5 the division required by section nine of this article.

6 (2) “Department” means the Department of
7 Transportation.

8 (3) “Developer” means the private entity that is
9 responsible for the acquisition, construction or improvement
10 of a qualifying transportation facility.

11 (4) “Division” means the Division of Highways.

12 (5) “Material default” means any default by the developer
13 in the performance of its duties under subsection (f), section
14 eight of this article that jeopardizes adequate service to the
15 public from a qualifying transportation facility and remains
16 unremedied after the division has provided notice to the
17 developer and a reasonable cure period has elapsed.

18 (6) “Private entity” means any natural person,
19 corporation, limited liability company, partnership, joint
20 venture or other private business entity.

21 (7) “Public entity” means the State of West Virginia or
22 any political subdivision thereof.

23 (8) “Qualifying transportation facility” means one or
24 more transportation facilities acquired, constructed or
25 improved by a private entity pursuant to this article.

26 (9) “Revenues” mean the user fees or service payments
27 generated by a qualifying transportation facility.

28 (10) “Service contract” means a contract entered into
29 between a public entity and a developer pursuant to section
30 six of this article.

31 (11) “Service payments” mean payments to the developer
32 of a qualifying transportation facility pursuant to a service
33 contract.

34 (12) “State” means the State of West Virginia.

35 (13) “Transportation facility” means any public inland
36 waterway port facility, road, bridge, tunnel, overpass or
37 existing airport used for the transportation of persons or
38 goods, and the structures, equipment, facilities or
39 improvements necessary or incident thereto.

40 (14) “User fees” mean the rates, tolls, fees or other
41 charges imposed by the developer of a qualifying
42 transportation facility for use of all or a portion of the
43 qualifying transportation facility pursuant to the
44 comprehensive agreement.

§17-27-3. Prerequisites for development.

1 Any private entity seeking authorization under this article
2 to acquire, construct or improve a transportation facility shall
3 first submit a conceptual proposal as set forth in section five
4 of this article: *Provided*, That notwithstanding any provision
5 of this code to the contrary, the division has no duty to
6 accept, consider or review a conceptual proposal that is not
7 solicited by the division. The private entity may initiate the
8 approval process pursuant to subsections (a) and (b) of said
9 section or the division may alternatively request proposals
10 pursuant to subsection (c) of said section.

§17-27-4. Powers and duties of the division and other agencies that are part of the department.

1 In addition to the powers and duties set forth elsewhere
2 in this code, the division and any other agency that is part of
3 the department may:

4 (1) Undertake one level of review for each proposal
5 submitted by a private entity in accordance with this article.
6 The review shall consist of the review by the division of the
7 conceptual proposal: *Provided*, That expenses of the division
8 incurred for review of proposal shall be paid by the private
9 entity submitting the proposal. The division shall take into
10 account at all times the needs and funding capabilities of the
11 state as a whole in terms of transportation;

12 (2) Enter into agreements, contracts or other transactions
13 with any agency that is part of the department, any federal,
14 state, county, municipal agency or private entity;

15 (3) Act on behalf of the state and represent the state in the
16 planning, financing, development and construction of any
17 transportation facility for which solicited proposals have been
18 received in accordance with the provisions of this article,
19 with the concurrence of the affected public entity. Other
20 public entities in this state shall cooperate to the fullest extent
21 with what the division considers appropriate to effectuate the
22 duties of the division;

23 (4) Exempt from disclosure any sensitive business,
24 commercial or financial information that is not customarily
25 provided to business competitors that is submitted to the
26 division for final review and approval;

27 (5) Exempt from disclosure any documents,
28 communications or information described in this section
29 including, but not limited to, the project's design,
30 management, financing and other details in accordance with
31 the provisions of article one, chapter twenty-nine-b of this
32 code; and

33 (6) Do any and all things necessary to carry out and
34 accomplish the purposes of this article.

**§17-27-5. Submission and review of conceptual proposals;
approval by the Commissioner of Highways.**

1 (a) A private entity may submit in writing a solicited
2 conceptual proposal for a transportation facility to the
3 division for consideration. The conceptual proposal shall
4 include the following:

5 (1) A statement of the private entity's qualifications and
6 experience;

7 (2) A description of the proposed transportation facility;

8 (3) A description of the financing for the transportation
9 facility; and

10 (4) A statement setting forth the degree of public support
11 for the proposed transportation facility, including a statement
12 of the benefits of the proposed transportation facility to the
13 public and its compatibility with existing transportation
14 facilities.

15 (b) Following review by the division, the division shall
16 submit to the Commissioner of Highways the conceptual
17 proposals and priority ranking for review for final selection.

18 (c) The conceptual proposal shall be accompanied by the
19 following material and information unless waived by the
20 division with respect to the transportation facility or facilities
21 that the private entity proposes to develop as a qualifying
22 transportation facility:

23 (1) A topographic map (1:2,000 or other appropriate
24 scale) indicating the location of the transportation facility or
25 facilities;

26 (2) A description of the transportation facility or
27 facilities, including the conceptual design of the facility or
28 facilities and all proposed interconnections with other
29 transportation facilities;

30 (3) The projected total life-cycle cost of the transportation
31 facility or facilities and the proposed date for acquisition of
32 or the beginning of construction of, or improvements to, the
33 transportation facility or facilities;

34 (4) A statement setting forth the method by which the
35 developer proposes to secure all property interests required
36 for the transportation facility or facilities: *Provided*, That
37 with the approval of the division, the private entity may
38 request that the comprehensive agreement assign the division
39 with responsibility for securing all property interests,
40 including public utility facilities, with all costs, including
41 costs of acquiring the property, to be reimbursed to the
42 division by the private entity. The statement shall include the
43 following information regarding the property interests or
44 rights, including, but not limited to, rights to extract mineable
45 minerals:

46 (A) The names and addresses, if known, of the current
47 owners of the property needed for the transportation facility
48 or facilities;

49 (B) The nature of the property interests to be acquired;

50 (C) Any property that the division may expect to
51 condemn; and

52 (D) The extent to which the property has been or will be
53 subjected to the extraction of mineable minerals.

54 (5) Information relating to the current transportation
55 plans, if any, of each affected local jurisdiction;

56 (6) A list of all permits and approvals required for
57 acquisition or construction of or improvements to the
58 transportation facility or facilities from local, state or federal
59 agencies and a projected schedule for obtaining the permits
60 and approvals: *Provided*, That the acquisition, construction,
61 improvement or operation of a qualifying transportation
62 facility that includes the extraction of mineable minerals is
63 required to obtain all necessary permits or approvals from all
64 applicable authorities in the same manner as if it were not a
65 qualifying transportation facility under this article;

66 (7) A list of public utility facilities, if any, that will be
67 crossed or affected by or as the result of the construction or
68 improvement of the public port transportation facility or
69 facilities and a statement of the plans of the developer to
70 accommodate the crossings or relocations;

71 (8) A statement setting forth the developer's general plans
72 for financing and operating the transportation facility or
73 facilities;

74 (9) The names and addresses of the persons who may be
75 contacted for further information concerning the request;

76 (10) Information about the developer, including, but not
77 limited to, an organizational chart of the developer,
78 capitalization of the developer, experience in the operation of
79 transportation facilities and references and certificates of
80 good standing from the Tax Commissioner, Insurance
81 Commissioner and the Division of Unemployment
82 Compensation evidencing that the developer is in good
83 standing with state tax, workers' compensation and
84 unemployment compensation laws, respectively; and

85 (11) Any additional material and information requested
86 by the Commissioner of Highways.

87 (d) The division, with approval of the Commissioner of
88 Highways, may solicit proposals from private entities for the
89 acquisition, construction or improvement of transportation
90 facilities in a form and with the content determined by the
91 division.

92 (e) The division may solicit any proposal for the
93 acquisition, construction or improvement of the
94 transportation facility or facilities as a qualifying
95 transportation facility if it is determined that it serves the
96 public purpose of this article. The division may determine
97 that the acquisition, construction or improvement of the
98 transportation facility or facilities as a qualifying
99 transportation facility serves a public purpose if:

100 (1) There is a public need for the transportation facility of
101 the type the private entity proposes to operate as a qualifying
102 transportation facility;

103 (2) The transportation facility and the proposed
104 interconnections with existing transportation facilities and the
105 developer's plans for development of the qualifying
106 transportation facility are reasonable and compatible with the
107 state transportation plan and with the local comprehensive
108 plan or plans;

109 (3) The estimated cost of the transportation facility or
110 facilities is reasonable in relation to similar facilities;

111 (4) The acquisition, construction, improvement or the
112 financing of the transportation facilities does not involve any
113 moneys from the State Road Fund unless those moneys from
114 the State Road Fund serve as a required match for federal
115 funds specifically earmarked in a federal authorization or
116 appropriation bill for a transportation facility to be acquired,
117 constructed or equipped pursuant to this article: *Provided,*
118 That the dedication of State Road Fund moneys in any fiscal
119 year as state required match for the federal earmark does not

120 exceed four percent of the immediate preceding three fiscal
121 years average of division's construction contracts awarded
122 under the competitive bid process: *Provided, however*, That
123 the moneys from the General Revenue Fund may also be
124 used if so designated and approved by the Legislature.

125 (5) The use of federal funds in connection with the
126 financing of a qualifying transportation facility has been
127 determined by the division to be compatible with the state
128 transportation plan and with the local comprehensive plan or
129 plans; and

130 (6) The private entity's plans will result in the timely
131 acquisition or construction of or improvements to the
132 transportation facility for their more efficient operation and
133 that the private entity's plans will result in a more timely and
134 economical delivery of the transportation facility than
135 otherwise available under existing delivery systems.

136 (f) Notwithstanding any provision of this article to the
137 contrary, the recommendation of the division to the
138 Commissioner of Highways is subject to:

139 (1) The private entity's entering into a comprehensive
140 agreement with the division; and

141 (2) With respect to transportation facilities, the
142 requirement that public information dissemination with
143 regard to any proposal under consideration comply with the
144 division's policy on the public involvement process, as
145 revised.

146 (g) In connection with its approval of the development of
147 the transportation facility as a qualifying transportation
148 facility, the division shall establish a date for the acquisition
149 of or the beginning of construction of or improvements to the
150 qualifying transportation facility. The division may extend
151 that date.

152 (h) Selection by the Commissioner of Highways.

153 (1) Upon presentations of proposals received by the
154 division, the commissioner shall make his or her decision for
155 the project.

156 (2) The commissioner shall notify the division and the
157 public of the final selection for the project.

§17-27-6. Service contracts.

1 In addition to any authority otherwise conferred by law,
2 any public entity may contract for services to be provided for
3 a qualifying transportation facility in exchange for service
4 payments and other consideration as the division determines
5 appropriate.

§17-27-7. Dedication of public property.

1 Any public entity may dedicate any property interest that
2 it has for public use as a qualified transportation facility if it
3 finds it will serve the public purpose of this article. In
4 connection with the dedication, a public entity may convey
5 any property interest that it has to the developer, by contract,
6 for any consideration determined by the public entity. This
7 consideration may include, without limitation, the agreement
8 of the developer to develop the qualifying transportation
9 facility. No real property may be dedicated by a public entity
10 pursuant to this article unless all other public notice and
11 comment requirements are met.

§17-27-8. Powers and duties of the developer.

1 (a) The developer has all power allowed by law generally
2 to a private entity having the same form of organization as
3 the developer and may acquire, construct or improve the

4 qualifying transportation facility and impose user fees in
5 connection with the use of the facility.

6 (b) The developer may own, lease or acquire any other
7 right to facilitate the development of the qualifying
8 transportation facility.

9 (c) Any financing of the qualifying transportation facility
10 may be in the amounts and upon terms and conditions
11 determined by the developer. The developer may issue debt,
12 equity or other securities or obligations, enter into sale and
13 leaseback transactions and secure any financing with a pledge
14 of, security interest in, or lien on, any or all of its property,
15 including all of its property interests in the qualifying
16 transportation facility.

17 (d) Subject to applicable permit requirements, the
18 developer may cross any canal or navigable watercourse as
19 long as the crossing does not unreasonably interfere with the
20 current navigation and use of the waterway.

21 (e) In developing the qualifying transportation facility,
22 the developer may:

23 (1) Make classifications according to reasonable
24 categories for assessment of user fees; and

25 (2) With the consent of the division, make and enforce
26 reasonable rules to the same extent that the division may
27 make and enforce rules with respect to a similar
28 transportation facility. The developer may, by agreement
29 with appropriate law-enforcement agencies, arrange for video
30 enforcement in connection with its toll collection activities.

31 (f) The developer shall:

32 (1) Acquire, construct or improve the qualifying
33 transportation facility in a manner that meets the engineering
34 standards of:

35 (A) The authority for facilities operated and maintained
36 by the division, in accordance with the provisions of the
37 comprehensive agreement; and

38 (B) The division, in accordance with the provisions of the
39 comprehensive agreement;

40 (2) Keep the qualifying transportation facility open for
41 use by the members of the public at all times after its initial
42 opening upon payment of the applicable user fees or service
43 payments: *Provided*, That the qualifying transportation
44 facility may be temporarily closed because of emergencies
45 or, with the consent of the division, to protect the safety of
46 the public or for reasonable construction or maintenance
47 procedures;

48 (3) Contract for the performance of all maintenance and
49 operation of the transportation facility through the division,
50 using its maintenance and operations practices, until the date
51 of termination of the developer's duties as defined in the
52 comprehensive agreement;

53 (4) Cooperate with the division in establishing any
54 interconnection with the qualifying transportation facility
55 requested by the division;

56 (5) Remain in compliance with state tax, workers'
57 compensation and unemployment compensation laws; and

58 (6) Comply with the provisions of the comprehensive
59 agreement and any service contract.

§17-27-9. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving the
2 qualifying transportation facility, the developer shall enter
3 into a comprehensive agreement with the division. The
4 comprehensive agreement shall provide for:

5 (1) Delivery of performance or payment bonds in
6 connection with the construction of or improvements to the
7 qualifying transportation facility, in the forms and amounts
8 satisfactory to the division;

9 (2) Review and approval of the final plans and
10 specifications for the qualifying transportation facility by the
11 division;

12 (3) Inspection of the construction of or improvements to
13 the qualifying transportation facility to ensure that they
14 conform to the engineering standards acceptable to the
15 division;

16 (4) Maintenance of a policy or policies of public liability
17 insurance or self-insurance, in a form and amount satisfactory
18 to the division and reasonably sufficient to insure coverage
19 of tort liability to the public and employees and to enable the
20 continued operation of the qualifying transportation facility:
21 *Provided*, That in no event may the insurance impose any
22 pecuniary liability on the state, its agencies or any political
23 subdivision of the state. Copies of the policies shall be filed
24 with the division accompanied by proofs of coverage;

25 (5) Monitoring of the maintenance and operating
26 practices of the developer by the division and the taking of
27 any actions the division finds appropriate to ensure that the
28 qualifying transportation facility is properly maintained and
29 operated;

30 (6) Itemization and reimbursement to be paid to the
31 division for the review and any services provided by the
32 division;

33 (7) Filing of appropriate financial statements on a
34 periodic basis;

35 (8) A reasonable maximum rate of return on investment
36 for the developer;

37 (9) The date of termination of the developer's duties
38 under this article and dedication to the division; and

39 (10) That a transportation facility shall accommodate all
40 public utilities on a reasonable, nondiscriminatory and
41 completely neutral basis and in compliance with the
42 provisions of section seventeen-b, article four, chapter
43 seventeen of this code.

44 (b) The comprehensive agreement may require user fees
45 established by agreement of the parties. Any user fees shall
46 be set at a level that, taking into account any service
47 payments, allows the developer the rate of return on its
48 investment specified in the comprehensive agreement:
49 *Provided*, That the schedule and amount of the initial user
50 fees to be imposed and any increase of the user fees must be
51 approved by the Commissioner of the Division of Highways.
52 A copy of any service contract shall be filed with the
53 division. A schedule of the current user fees shall be made
54 available by the developer to any member of the public on
55 request. In negotiating user fees under this section, the
56 parties shall establish fees that are the same for persons using
57 the facility under like conditions and that will not
58 unreasonably discourage use of the qualifying transportation
59 facility. The execution of the comprehensive agreement or
60 any amendment to the comprehensive agreement constitutes
61 conclusive evidence that the user fees provided in the
62 comprehensive agreement comply with this article. User fees
63 established in the comprehensive agreement as a source of
64 revenues may be in addition to, or in lieu of, service
65 payments.

66 (c) In the comprehensive agreement, the division may
67 agree to accept grants or loans from the developer, from time
68 to time, from amounts received from the state or federal

69 government or any agency or instrumentality of the state or
70 federal government.

71 (d) The comprehensive agreement shall incorporate the
72 duties of the developer under this article and may contain any
73 other terms and conditions that the division determines serve
74 the public purpose of this chapter. Without limitation, the
75 comprehensive agreement may contain provisions under
76 which the division agrees to provide notice of default and
77 cure rights for the benefit of the developer and the persons
78 specified in the comprehensive agreement as providing
79 financing for the qualifying transportation facility. The
80 comprehensive agreement may contain any other lawful
81 terms and conditions to which the developer and the division
82 mutually agree, including, without limitation, provisions
83 regarding unavoidable delays or provisions providing for a
84 loan of public funds to the developer to acquire, construct or
85 improve one or more qualifying transportation facilities.

86 (e) The comprehensive agreement shall require the
87 deposit of any earnings in excess of the maximum rate of
88 return as negotiated in the comprehensive agreement in the
89 Economic Development Project Bridge Loan Fund
90 established pursuant to section eighteen-a, article twenty-two,
91 chapter twenty-nine of this code.

92 (f) Any changes in the terms of the comprehensive
93 agreement, agreed upon by the parties and subject to the
94 requirements of subsection (h) of this section, shall be added
95 to the comprehensive agreement by written amendment.

96 (g) Notwithstanding any provision of this article to the
97 contrary, the division may not enter into any comprehensive
98 agreements with a developer after the thirtieth day of June,
99 two thousand thirteen.

100 (h) Notwithstanding any provision of this article to the
101 contrary, the division may not enter into any comprehensive

102 agreements with a developer after the thirtieth day of June,
103 two thousand thirteen.

104 (i) Notwithstanding any provision of this article to the
105 contrary, the division may not enter into a comprehensive
106 agreement until the comprehensive agreement has been
107 approved by the Legislature by the adoption of a concurrent
108 resolution: *Provided*, That all voting on the floor of both
109 houses on the question of the adoption of any concurrent
110 resolution approving a comprehensive agreement shall be by
111 yeas and nays to be entered on the Journals. If the
112 Legislature approves the comprehensive agreement, the
113 division shall submit the comprehensive agreement to the
114 Governor for his or her approval or disapproval.

§17-27-10. Federal, state and local assistance.

1 The division may take any action to obtain federal, state
2 or local assistance for a qualifying transportation facility that
3 serves the public purpose of this article and may enter into
4 any contracts required to receive federal assistance. The
5 division may determine that it serves the public purpose of
6 this article for all or any portion of the costs of a qualifying
7 transportation facility to be paid, directly or indirectly, from
8 the proceeds of a grant or loan made by the local, state or
9 federal government or any agency or instrumentality thereof.

§17-27-11. Material default; remedies.

1 (a) Except upon written agreement of the developer and
2 any other parties identified in the comprehensive agreement,
3 the division may exercise, at its discretion, any or all of the
4 following remedies provided in this section or elsewhere in
5 this article to remedy any material default that has occurred
6 or may continue to occur.

7 (1) To elect to take over the transportation facility or
8 facilities and in that case it shall succeed to all of the rights,
9 title and interest in the transportation facility or facilities,
10 subject to any liens on revenues previously granted by the
11 developer to any person providing financing for the facility
12 or facilities and the provisions of subsection (c) of this
13 section;

14 (2) To exercise the power of condemnation to acquire the
15 qualifying transportation facility or facilities. Any person
16 who has provided financing for the qualifying transportation
17 facility and the developer, to the extent of its capital
18 investment, may participate in the condemnation proceedings
19 with the standing of a property owner;

20 (3) To terminate the comprehensive agreement and
21 exercise any other rights and remedies that may be available
22 to it at law or in equity, subject only to the express limitations
23 of the terms of the comprehensive agreement; and

24 (4) To make or cause to be made any appropriate claims
25 under the performance or payment bonds required by this
26 article.

27 (b) In the event the division elects to take over a
28 qualifying transportation facility pursuant to subdivision (1),
29 subsection (a) of this section, the division may acquire,
30 construct or improve the transportation facility, impose user
31 fees for the use of the transportation facility and comply with
32 any service contracts as if it were the developer. Any
33 revenues that are subject to a lien shall be collected for the
34 benefit of, and paid to, secured parties, as their interests may
35 appear, to the extent necessary to satisfy the developer's
36 obligations to secured parties, including the maintenance of
37 reserves and the liens shall be correspondingly reduced and,
38 when paid off, released. Remaining revenues, if any, after all
39 payments to, or for the benefit of, secured parties shall be

40 paid to the developer, subject to the negotiated maximum rate
41 of return. The right to receive the payment, if any, shall be
42 considered just compensation for the transportation facility
43 or facilities. The full faith and credit of the division may not
44 be pledged to secure any financing of the developer by the
45 election to take over the qualifying transportation facility.
46 Assumption of development of the qualifying transportation
47 facility does not obligate the division to pay any obligation of
48 the developer from sources other than revenues.

**§17-27-12. Governmental entities prohibited from pledging full
faith and credit.**

1 The full faith and credit of the state, or any county,
2 municipality or political subdivision of the state may not be
3 pledged to secure any financing of the developer in
4 connection with the acquisition, construction or equipping of
5 a qualifying transportation facility.

§17-27-13. Condemnation.

1 (a) At the request of the developer, the division may
2 exercise the power of condemnation that it has under law for
3 the purpose of acquiring any lands or estates or interests in
4 any lands or estates to the extent that the division finds that
5 the action serves the public purpose of this article: *Provided,*
6 That the power of condemnation may not be exercised if the
7 extraction of mineable minerals is outside the defined one
8 thousand foot corridor of the project or work which is the
9 subject of a solicited conceptual proposal, comprehensive
10 agreement or service contract submitted or entered into under
11 the provisions of this article. Any amounts to be paid in any
12 condemnation proceeding shall be paid by the developer.

13 (b) Until the division has provided written certification as
14 to the existence of a material default under subsection (a),

15 section eleven of this article, the power of condemnation may
16 not be exercised against a qualifying transportation facility.

§17-27-14. Utility crossings.

1 The developer and each county, municipality, public
2 service district, public utility, railroad and cable television
3 provider whose facilities are to be crossed or affected shall
4 cooperate fully with the other in planning and arranging the
5 manner of the crossing or relocation of the facilities. Any
6 entity possessing the power of condemnation is expressly
7 granted the powers in connection with the moving or
8 relocation of facilities to be crossed by the qualifying
9 transportation facility or that must be relocated to the extent
10 that the moving or relocation is made necessary or desirable
11 by construction of or improvements to the qualifying
12 transportation facility, which includes construction of or
13 improvements to temporary facilities for the purpose of
14 providing service during the period of construction or
15 improvement. Any amount to be paid for the crossing,
16 construction, moving or relocating of facilities shall be paid
17 by the developer.

§17-27-15. Dedication of assets.

1 The division shall terminate the developer's authority and
2 duties under this article on the date set forth in the
3 comprehensive agreement. Upon termination, the division
4 and duties of the developer under this article cease and the
5 qualifying transportation facility shall be dedicated to the
6 division for public use.

**§17-27-16. Qualifying a transportation facility as a public
improvement.**

1 All qualifying transportation facilities authorized under
2 this article are public improvements and are subject to article

3 five-a, chapter twenty-one of this code. Article twenty-two,
4 chapter five of this code applies to all qualifying
5 transportation facilities authorized under this article. All
6 construction, reconstruction, repair or improvement of
7 qualifying transportation facilities authorized under this
8 article shall be awarded by competitive bidding. Competitive
9 bids shall be solicited by the division for each construction
10 contract in excess of twenty-five thousand dollars in total
11 cost. Construction costs should be of sufficient size that the
12 performance and payment bonds are in the ten million to
13 thirty million dollar range, where possible. Competitive bids
14 shall be solicited by the division through publication of a
15 Class II legal advertisement, in compliance with the
16 provisions of article three, chapter fifty-nine of this code, and
17 the publication area is the county or municipality in which
18 the transportation facility is to be located. The advertisement
19 shall also be published as a Class II advertisement in a
20 newspaper of general circulation published in the city of
21 Charleston. The advertisement shall solicit sealed proposals
22 for the construction of the transportation facility, stating the
23 time and place for the opening of bids. All bids shall be
24 publicly opened and read aloud. Construction contracts shall
25 be awarded to the lowest qualified responsible bidder, who
26 shall furnish a sufficient performance or payment bond:
27 *Provided*, That both the division and the private entity have
28 the right to reject all bids and solicit new bids for the
29 construction contract. The provisions of article one-c, chapter
30 twenty-one of this code apply to the construction of all
31 qualifying transportation facilities approved under this
32 article.

§17-27-17. Exemptions from taxation.

1 (a) The exercise of the powers granted in this article will
2 be in all respects for the benefit of the people of this state, for
3 the improvement of their health, safety, convenience and
4 welfare and for the enhancement of their residential,

5 agricultural, recreational, economic, commercial and
 6 industrial opportunities and is a public purpose. As the
 7 construction, acquisition, improvement, operation and
 8 maintenance of qualifying transportation facilities will
 9 constitute the performance of essential governmental
 10 functions, a developer is not required to pay any taxes or
 11 assessments upon any qualifying transportation facility or
 12 any property acquired or used by the developer under the
 13 provisions of this article or upon the income therefrom, other
 14 than taxes collected from the consumer pursuant to article
 15 fifteen, chapter eleven of this code.

§17-27-18. Construction.

1 The provisions of this article are remedial and shall be
 2 liberally construed and applied so as to promote the purposes
 3 set out in section one of this article.



CHAPTER 185

**(Com. Sub. for H.B. 4121 - By Delegates Fragale, DeLong,
 Boggs, Barker and Eldridge)**

 [Passed March 8, 2008; in effect ninety days from passage.]
 [Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto three new sections, designated §6-9-2a, §6-9-2b and §6-9-2c; to amend said code by adding thereto a new section, designated §7-5-7a; and to amend and reenact §8-12-5 of said code, all relating to authorizing the participation of local governments in a purchasing card program to be administered by the Auditor as chief inspector of public offices; authorizing

Auditor to contract with institutions for provision of the cards; authorizing Auditor to propose rules; creating local Government Purchasing Card Expenditure Fund; use of moneys in fund; legislative appropriation of fund; and creating offenses and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §6-9-2a, §6-9-2b and §6-9-2c; that said code be amended by adding thereto a new section, designated §7-5-7a; and that §8-12-5 of said code be amended and reenacted, all to read as follows:

Chapter

- 6. General Provisions Respecting Officers.**
- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 9. SUPERVISION OF PUBLIC OFFICERS.

- §6-9-2a. Local Government Purchasing Card Program.
- §6-9-2b. Local Government Purchasing Card Expenditure Fund Created.
- §6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

§6-9-2a. Local Government Purchasing Card Program.

1 Notwithstanding any provisions of the code to the
2 contrary, the Auditor may authorize and administer a
3 purchasing card program for local governments under the
4 auspices of the chief inspector division. The purchasing card
5 program shall be conducted so that procedures and controls
6 for the procurement and payment of goods and services are
7 made more efficient and so that the accounting and reporting
8 of such payments shall be uniform for all local governments
9 utilizing the program. The program shall permit local

10 governments to use a purchase charge card to purchase goods
11 and services. Notwithstanding any other code provisions to
12 the contrary, local government purchases may be made with
13 the purchase charge card for any payment authorized by the
14 Auditor, including regular routine payments, travel and
15 emergency payments, and shall be set at an amount to be
16 determined by the Auditor: *Provided*, That purchasing cards
17 may not be utilized for the purpose of obtaining cash
18 advances, whether the advances are made in cash or by other
19 negotiable instrument: *Provided, however*, That purchasing
20 cards may be used for cash advances for travel purchases
21 upon approval of the Auditor. Selection of a charge card
22 vendor to provide local government purchasing cards shall be
23 based upon expressions of interest submitted by charge card
24 vendors. The Auditor shall contract with the successful
25 institution for provision of local government purchasing
26 cards. The selection shall be based upon the combination of
27 competence and qualification in the provision of services and
28 a determination of the best financial arrangement for the
29 program. The Auditor may propose rules for promulgation
30 to govern the implementation of the local government
31 purchase card program and may promulgate emergency rules
32 for emergency payments to effectuate the provision of such
33 services.

**§6-9-2b. Local Government Purchasing Card Expenditure Fund
Created.**

1 There is hereby created a local Government Purchasing
2 Card Expenditure Fund. Money received by the Auditor
3 pursuant to an agreement with vendors providing local
4 government purchasing charge cards and any interest or other
5 return earned on the money shall be deposited in the special
6 revenue revolving local Government Purchasing Card
7 Expenditure Fund in the State Treasury to be administered by
8 the Auditor. The fund shall be used to pay all expenses
9 incurred by the Auditor in the implementation and operation

10 of the local government purchasing card program. The
11 Auditor may also utilize the fund to provide a proportionate
12 share of rebate back to the general fund of local governments
13 based upon utilization of the program. Expenditures from the
14 fund shall be made in accordance with appropriations by the
15 Legislature pursuant to the provisions of article three, chapter
16 twelve of this code and upon fulfillment of the provisions set
17 forth in article two, chapter five-a of this code.

§6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

1 It is unlawful for any person to use a local government
2 purchasing card, issued in accordance with the provisions of
3 section two-a of this article, to make any purchase of goods
4 or services in a manner which is contrary to the provisions of
5 section two-a of this article or the rules promulgated pursuant
6 to that section. Any person who violates the provisions of
7 this section is guilty of a felony and, upon conviction thereof,
8 shall be confined in a state correctional facility not less than
9 one year nor more than five years, or fined no more than five
10 thousand dollars, or both fined and imprisoned.

**CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.**

ARTICLE 5. FISCAL AFFAIRS.

§7-5-7a. Authorization for Purchase Card utilization.

1 Notwithstanding any other code provision to the contrary,
2 any county or county agency may participate in a purchasing
3 card program for local governments authorized and
4 administered by the State Auditor as an alternative payment
5 method.

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.****§8-12-5. General powers of every municipality and the governing body thereof.**

1 In addition to the powers and authority granted by: (i)
2 The Constitution of this state; (ii) other provisions of this
3 chapter; (iii) other general law; and (iv) any charter, and to
4 the extent not inconsistent or in conflict with any of the
5 foregoing except special legislative charters, every
6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate action
9 based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or vacate,
12 discontinue and close, streets, avenues, roads, alleys, ways,
13 sidewalks, drains and gutters, for the use of the public, and to
14 improve and light the same, and have them kept free from
15 obstructions on or over them which have not been authorized
16 pursuant to the succeeding provisions of this subdivision;
17 and, subject to such terms and conditions as the governing
18 body shall prescribe, to permit, without in any way limiting
19 the power and authority granted by the provisions of article
20 sixteen of this chapter, any person to construct and maintain
21 a passageway, building or other structure overhanging or
22 crossing the airspace above a public street, avenue, road,
23 alley, way, sidewalk or crosswalk, but before any permission
24 for any person to construct and maintain a passageway,

25 building or other structure overhanging or crossing any
26 airspace is granted, a public hearing thereon shall be held by
27 the governing body after publication of a notice of the date,
28 time, place and purpose of the public hearing has been
29 published as a Class I legal advertisement in compliance with
30 the provisions of article three, chapter fifty-nine of this code
31 and the publication area for the publication shall be the
32 municipality: *Provided*, That any permit so granted shall
33 automatically cease and terminate in the event of
34 abandonment and nonuse thereof for the purposes intended
35 for a period of ninety days, and all rights therein or thereto
36 shall revert to the municipality for its use and benefit;

37 (2) To provide for the opening and excavation of streets,
38 avenues, roads, alleys, ways, sidewalks, crosswalks and
39 public places belonging to the municipality and regulate the
40 conditions under which any such opening may be made;

41 (3) To prevent by proper penalties the throwing,
42 depositing or permitting to remain on any street, avenue,
43 road, alley, way, sidewalk, square or other public place any
44 glass, scrap iron, nails, tacks, wire, other litter or any
45 offensive matter or anything likely to injure the feet of
46 individuals or animals or the tires of vehicles;

47 (4) To regulate the use of streets, avenues, roads, alleys,
48 ways, sidewalks, crosswalks and public places belonging to
49 the municipality, including the naming or renaming thereof,
50 and to consult with local postal authorities, the Division of
51 Highways and the directors of county emergency
52 communications centers to assure uniform, nonduplicative
53 addressing on a permanent basis;

54 (5) To regulate the width of streets, avenues and roads,
55 and, subject to the provisions of article eighteen of this
56 chapter, to order the sidewalks, footways and crosswalks to
57 be paved, repaved, curbed or recurbed and kept in good

58 order, free and clean, by the owners or occupants thereof or
59 of the real property next adjacent thereto;

60 (6) To establish, construct, alter, operate and maintain, or
61 discontinue, bridges, tunnels and ferries and approaches
62 thereto;

63 (7) To provide for the construction and maintenance of
64 water drains, the drainage of swamps or marshlands and
65 drainage systems;

66 (8) To provide for the construction, maintenance and
67 covering over of watercourses;

68 (9) To control and administer the waterfront and
69 waterways of the municipality and to acquire, establish,
70 construct, operate and maintain and regulate flood control
71 works, wharves and public landings, warehouses and all
72 adjuncts and facilities for navigation and commerce and the
73 utilization of the waterfront and waterways and adjacent
74 property;

75 (10) To prohibit the accumulation and require the
76 disposal of garbage, refuse, debris, wastes, ashes, trash and
77 other similar accumulations whether on private or public
78 property: *Provided*, That, in the event the municipality
79 annexes an area which has been receiving solid waste
80 collection services from a certificated solid waste motor
81 carrier, the municipality and the solid waste motor carrier
82 may negotiate an agreement for continuation of the private
83 solid waste motor carrier services for a period of time, not to
84 exceed three years, during which time the certificated solid
85 waste motor carrier may continue to provide exclusive solid
86 waste collection services in the annexed territory;

87 (11) To construct, establish, acquire, equip, maintain and
88 operate incinerator plants and equipment and all other

89 facilities for the efficient removal and destruction of garbage,
90 refuse, wastes, ashes, trash and other similar matters;

91 (12) To regulate or prohibit the purchase or sale of
92 articles intended for human use or consumption which are
93 unfit for use or consumption, or which may be contaminated
94 or otherwise unsanitary;

95 (13) To prevent injury or annoyance to the public or
96 individuals from anything dangerous, offensive or
97 unwholesome;

98 (14) To regulate the keeping of gunpowder and other
99 combustibles;

100 (15) To make regulations guarding against danger or
101 damage by fire;

102 (16) To arrest, convict and punish any individual for
103 carrying about his or her person any revolver or other pistol,
104 dirk, bowie knife, razor, slingshot, billy, metallic or other
105 false knuckles or any other dangerous or other deadly
106 weapon of like kind or character;

107 (17) To arrest, convict and punish any person for
108 importing, printing, publishing, selling or distributing any
109 pornographic publications;

110 (18) To arrest, convict and punish any person for keeping
111 a house of ill fame, or for letting to another person any house
112 or other building for the purpose of being used or kept as a
113 house of ill fame, or for knowingly permitting any house
114 owned by him or her or under his or her control to be kept or
115 used as a house of ill fame, or for loafing, boarding or
116 loitering in a house of ill fame, or frequenting same;

117 (19) To prevent and suppress conduct and practices
118 which are immoral, disorderly, lewd, obscene and indecent;

119 (20) To prevent the illegal sale of intoxicating liquors,
120 drinks, mixtures and preparations;

121 (21) To arrest, convict and punish any individual for
122 driving or operating a motor vehicle while intoxicated or
123 under the influence of liquor, drugs or narcotics;

124 (22) To arrest, convict and punish any person for
125 gambling or keeping any gaming tables, commonly called
126 "A, B, C," or "E, O," table or faro bank or keno table, or table
127 of like kind, under any denomination, whether the gaming
128 table be played with cards, dice or otherwise, or any person
129 who shall be a partner or concerned in interest, in keeping or
130 exhibiting the table or bank, or keeping or maintaining any
131 gaming house or place, or betting or gambling for money or
132 anything of value;

133 (23) To provide for the elimination of hazards to public
134 health and safety and to abate or cause to be abated anything
135 which in the opinion of a majority of the governing body is
136 a public nuisance;

137 (24) To license, or for good cause to refuse to license in
138 a particular case, or in its discretion to prohibit in all cases,
139 the operation of pool and billiard rooms and the maintaining
140 for hire of pool and billiard tables notwithstanding the
141 general law as to state licenses for any such business and the
142 provisions of section four, article thirteen of this chapter; and
143 when the municipality, in the exercise of its discretion,
144 refuses to grant a license to operate a pool or billiard room,
145 mandamus may not lie to compel the municipality to grant
146 the license unless it shall clearly appear that the refusal of the
147 municipality to grant a license is discriminatory or arbitrary;
148 and in the event that the municipality determines to license
149 any business, the municipality has plenary power and
150 authority and it shall be the duty of its governing body to
151 make and enforce reasonable ordinances regulating the
152 licensing and operation of the businesses;

153 (25) To protect places of divine worship and to preserve
154 peace and order in and about the premises where held;

155 (26) To regulate or prohibit the keeping of animals or
156 fowls and to provide for the impounding, sale or destruction
157 of animals or fowls kept contrary to law or found running at
158 large;

159 (27) To arrest, convict and punish any person for cruelly,
160 unnecessarily or needlessly beating, torturing, mutilating,
161 killing, or overloading or overdriving or willfully depriving
162 of necessary sustenance any domestic animal;

163 (28) To provide for the regular building of houses or
164 other structures, for the making of division fences by the
165 owners of adjacent premises and for the drainage of lots by
166 proper drains and ditches;

167 (29) To provide for the protection and conservation of
168 shade or ornamental trees, whether on public or private
169 property, and for the removal of trees or limbs of trees in a
170 dangerous condition;

171 (30) To prohibit with or without zoning the location of
172 occupied house trailers or mobile homes in certain residential
173 areas;

174 (31) To regulate the location and placing of signs,
175 billboards, posters and similar advertising;

176 (32) To erect, establish, construct, acquire, improve,
177 maintain and operate a gas system, a waterworks system, an
178 electric system or sewer system and sewage treatment and
179 disposal system, or any combination of the foregoing (subject
180 to all of the pertinent provisions of articles nineteen and
181 twenty of this chapter and particularly to the limitations or
182 qualifications on the right of eminent domain set forth in
183 articles nineteen and twenty), within or without the corporate

184 limits of the municipality, except that the municipality may
185 not erect any system partly without the corporate limits of the
186 municipality to serve persons already obtaining service from
187 an existing system of the character proposed and where the
188 system is by the municipality erected, or has heretofore been
189 so erected, partly within and partly without the corporate
190 limits of the municipality, the municipality has the right to
191 lay and collect charges for service rendered to those served
192 within and those served without the corporate limits of the
193 municipality and to prevent injury to the system or the
194 pollution of the water thereof and its maintenance in a
195 healthful condition for public use within the corporate limits
196 of the municipality;

197 (33) To acquire watersheds, water and riparian rights,
198 plant sites, rights-of-way and any and all other property and
199 appurtenances necessary, appropriate, useful, convenient or
200 incidental to any system, waterworks or sewage treatment
201 and disposal works, as aforesaid, subject to all of the
202 pertinent provisions of articles nineteen and twenty of this
203 chapter;

204 (34) To establish, construct, acquire, maintain and
205 operate and regulate markets and prescribe the time of
206 holding the same;

207 (35) To regulate and provide for the weighing of articles
208 sold or for sale;

209 (36) To establish, construct, acquire, maintain and
210 operate public buildings, municipal buildings or city halls,
211 auditoriums, arenas, jails, juvenile detention centers or
212 homes, motor vehicle parking lots or any other public works;

213 (37) To establish, construct, acquire, provide, equip,
214 maintain and operate recreational parks, playgrounds and
215 other recreational facilities for public use and in this

216 connection also to proceed in accordance with the provisions
217 of article two, chapter ten of this code;

218 (38) To establish, construct, acquire, maintain and
219 operate a public library or museum or both for public use;

220 (39) To provide for the appointment and financial support
221 of a library board in accordance with the provisions of article
222 one, chapter ten of this code;

223 (40) To establish and maintain a public health unit in
224 accordance with the provisions of section two, article two,
225 chapter sixteen of this code, which unit shall exercise its
226 powers and perform its duties subject to the supervision and
227 control of the West Virginia Board of Health and State
228 Bureau for Public Health;

229 (41) To establish, construct, acquire, maintain and
230 operate hospitals, sanitariums and dispensaries;

231 (42) To acquire, by purchase, condemnation or otherwise,
232 land within or near the corporate limits of the municipality
233 for providing and maintaining proper places for the burial of
234 the dead and to maintain and operate the same and regulate
235 interments therein upon terms and conditions as to price and
236 otherwise as may be determined by the governing body and,
237 in order to carry into effect the authority, the governing body
238 may acquire any cemetery or cemeteries already established;

239 (43) To exercise general police jurisdiction over any
240 territory without the corporate limits owned by the
241 municipality or over which it has a right-of-way;

242 (44) To protect and promote the public morals, safety,
243 health, welfare and good order;

244 (45) To adopt rules for the transaction of business and the
245 government and regulation of its governing body;

246 (46) Except as otherwise provided, to require and take
247 bonds from any officers, when considered necessary, payable
248 to the municipality, in its corporate name, with such sureties
249 and in a penalty as the governing body may see fit,
250 conditioned upon the faithful discharge of their duties;

251 (47) To require and take from the employees and
252 contractors such bonds in a penalty, with such sureties and
253 with such conditions, as the governing body may see fit;

254 (48) To investigate and inquire into all matters of concern
255 to the municipality or its inhabitants;

256 (49) To establish, construct, require, maintain and operate
257 such instrumentalities, other than free public schools, for the
258 instruction, enlightenment, improvement, entertainment,
259 recreation and welfare of the municipality's inhabitants as the
260 governing body may consider necessary or appropriate for
261 the public interest;

262 (50) To create, maintain and operate a system for the
263 enumeration, identification and registration, or either, of the
264 inhabitants of the municipality and visitors thereto, or the
265 classes thereof as may be considered advisable;

266 (51) To require owners, residents or occupants of
267 factory-built homes situated in a factory-built rental home
268 community with at least ten factory-built homes, to visibly
269 post the specific numeric portion of the address of each
270 factory-built home on the immediate premises of the factory-
271 built home of sufficient size to be visible from the adjoining
272 street: *Provided*, That in the event no numeric or other
273 specific designation of an address exists for a factory-built
274 home subject to the authorization granted by this subdivision,
275 the municipality has the authority to provide a numeric or
276 other specific designation of an address for the factory-built
277 home and require that it be posted in accordance with the
278 authority otherwise granted by this section.

279 (52) To appropriate and expend not exceeding
280 twenty-five cents per capita per annum for advertising the
281 municipality and the entertainment of visitors;

282 (53) To conduct programs to improve community
283 relations and public relations generally and to expend
284 municipal revenue for such purposes;

285 (54) To reimburse applicants for employment by the
286 municipality for travel and other reasonable and necessary
287 expenses actually incurred by the applicants in traveling to
288 and from the municipality to be interviewed;

289 (55) To provide revenue for the municipality and
290 appropriate the same to its expenses;

291 (56) To create and maintain an Employee Benefits Fund
292 which may not exceed one tenth of one percent of the annual
293 payroll budget for general employee benefits and which is set
294 up for the purpose of stimulating and encouraging employees
295 to develop and implement cost-saving ideas and programs
296 and to expend moneys from the fund for these purposes;

297 (57) To enter into reciprocal agreements with
298 governmental subdivisions or agencies of any state sharing a
299 common border for the protection of people and property
300 from fire and for emergency medical services and for the
301 reciprocal use of equipment and personnel for these
302 purposes;

303 (58) To provide penalties for the offenses and violations
304 of law mentioned in this section, subject to the provisions of
305 section one, article eleven of this chapter, and such penalties
306 may not exceed any penalties provided in this chapter and
307 chapter sixty-one of this code for like offenses and violations;
308 and

309 (59) To participate in a purchasing card program for local
310 governments authorized and administered by the State
311 Auditor as an alternative payment method.

CHAPTER 186

(S.B. 512 - By Senator Bowman)

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to changing the number of members on the Records Management and Preservation Board for county government entities from nine to eleven members to accurately reflect the actual board membership.

Be it enacted by the Legislature of West Virginia:

That §5A-8-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

1 The Legislature finds that the use of electronic
2 technology and other procedures to manage and preserve
3 public records by counties should be uniform throughout the
4 state where possible.

5 (a) The governing body and the chief elected official of
6 a county, hereinafter referred to as a county government
7 entity, whether organized and existing under a charter or
8 under general law, shall promote the principles of efficient
9 records management and preservation of local records. A
10 county governing entity may, as far as practical, follow the
11 program established for the uniform management and
12 preservation of county records as set out in rules proposed for
13 legislative approval in accordance with the provisions of
14 article three, chapter twenty-nine-a of this code as proposed
15 by the Records Management and Preservation Board.

16 (b) In the event a county government entity decides to
17 destroy or otherwise dispose of a county record, the county
18 government entity may, prior to destruction or disposal
19 thereof, offer the record to the Director of the Section of
20 Archives and History of the Division of Culture and History
21 for preservation of the record as a document of historical
22 value. Unless authorized by the Supreme Court of Appeals,
23 the records of courts of record and magistrate courts are not
24 affected by the provisions of this section.

25 (c)(1) A preservation duplicate of a county government
26 entity record may be stored in any format approved by the
27 board in which the image of the original record is preserved
28 in a form, including CD-ROM and optical image storage
29 media, in which the image is incapable of erasure or
30 alteration and from which a reproduction of the stored record
31 may be retrieved that truly and accurately depicts the image
32 of the original county government record.

33 (2) Except for those formats, processes and systems used
34 for the storage of records on the effective date of this section,

35 no alternate format for the storage of county government
36 entity records described in this section is authorized for the
37 storage of county government entity records unless the
38 particular format has been approved pursuant to a legislative
39 rule promulgated by the board in accordance with the
40 provisions of chapter twenty-nine-a of this code. The board
41 may prohibit the use of any format, process or system used
42 for the storage of records upon its determination that the
43 same is not reasonably adequate to preserve the records from
44 destruction, alteration or decay.

45 (3) Upon creation of a preservation duplicate that stores
46 an original county government entity record in an approved
47 format that is incapable of erasure or alteration and that may
48 be retrieved in a format that truly and accurately depicts the
49 image of the original record, the county government entity
50 may destroy or otherwise dispose of the original in
51 accordance with the provisions of section seven-c, article
52 one, chapter fifty-seven of this code.

53 (d) A Records Management and Preservation Board for
54 county government entities is continued to be composed of
55 eleven members.

56 (1) Three members shall serve ex officio. One member
57 shall be the Commissioner of the Division of Culture and
58 History or designee who shall be the chair of the board. One
59 member shall be the Administrator of the Supreme Court of
60 Appeals or designee. One member shall be the Chief
61 Technology Officer or designee.

62 (2) The Governor shall appoint eight members of the
63 board, with the advice and consent of the Senate. Not more
64 than five appointments to the board may be from the same
65 political party and not more than three members may be
66 appointed from the same congressional district. Of the eight
67 members appointed by the Governor:

68 (i) Five appointments shall be county elected officials,
69 one of whom shall be a clerk of a county commission, one of
70 whom shall be a circuit court clerk, one of whom shall be a
71 county commissioner, one of whom shall be a county sheriff
72 and one of whom shall be a county assessor, to be selected
73 from a list of fifteen names. The names of three clerks of
74 county commissions and three circuit court clerks shall be
75 submitted to the Governor by the West Virginia Association
76 of Counties. The names of three county commissioners shall
77 be submitted to the Governor jointly by the West Virginia
78 Association of Counties and the West Virginia County
79 Commissioners Association. The names of three county
80 sheriffs shall be submitted to the Governor by the West
81 Virginia Sheriff's Association. The names of three county
82 assessors shall be submitted to the Governor by the
83 Association of West Virginia Assessors;

84 (ii) One appointment shall be a county prosecuting
85 attorney to be selected from a list of three names submitted
86 by the West Virginia Prosecuting Attorneys Institute;

87 (iii) One appointment shall be an attorney licensed in
88 West Virginia and in good standing as a member of the West
89 Virginia State Bar with experience in real estate and mineral
90 title examination, to be selected from a list of three names
91 submitted by the State Bar; and

92 (iv) One appointment shall be a representative of a local
93 historical or genealogical society.

94 (e) The members of the board shall serve without
95 compensation but shall be reimbursed for all reasonable and
96 necessary expenses actually incurred in the performance of
97 their duties as members of the board in a manner consistent
98 with the guidelines of the Travel Management Office of the
99 Department of Administration. In the event the expenses are
100 paid, or are to be paid, by a third party, the member shall not
101 be reimbursed by the state.

102 (f) The staff of the board shall consist of the Director of
103 the Archives and History Section of the Division of Culture
104 and History and any additional staff as needed.

105 (g) The board shall propose rules for legislative approval
106 in accordance with the provisions of article three, chapter
107 twenty-nine-a of this code to establish a system of records
108 management and preservation for county governments:
109 *Provided, That*, for the retention and disposition of records of
110 courts of record and magistrate courts, the implementation of
111 the rule is subject to action by the Supreme Court of Appeals
112 of West Virginia. The proposed rules shall include
113 provisions for establishing a program of grants to county
114 governments for making records management and
115 preservation uniform throughout the state. The board is not
116 authorized to propose or promulgate emergency rules under
117 the provisions of this section.

118 (h) In addition to the fees charged by the clerk of the
119 county commission under the provisions of section ten,
120 article one, chapter fifty-nine of this code, the clerk shall
121 charge and collect an additional one-dollar fee for every
122 document containing less than ten pages filed for recording
123 and an additional one-dollar fee for each additional ten pages
124 of document filed for recording. At the end of each month,
125 the clerk of the county commission shall deposit into the
126 Public Records and Preservation Account as established in
127 the State Treasury all fees collected: *Provided, That* the clerk
128 may retain not more than ten percent of the fees for costs
129 associated with the collection of the fees. Clerks shall be
130 responsible for accounting for the collection and deposit in
131 the State Treasury of all fees collected by the clerk under the
132 provisions of this section.

133 (i) There is hereby created in the State Treasury a special
134 account entitled the Public Records and Preservation
135 Revenue Account. The account shall consist of all fees
136 collected under the provisions of this section, legislative

137 appropriations, interest earned from fees, investments, gifts,
138 grants or contributions received by the board. Expenditures
139 from the account shall be for the purposes set forth in this
140 article and are not authorized from collections but are to be
141 made only in accordance with appropriation by the
142 Legislature and in accordance with the provisions of article
143 three, chapter twelve of this code and upon the fulfillment of
144 the provisions set forth in article two, chapter eleven-b of this
145 code.

146 (j) Subject to the above provision, the board may expend
147 the funds in the account to implement the provisions of this
148 article. In expending funds from the account, the board shall
149 allocate not more than fifty percent of the funds for grants to
150 counties for records management, access and preservation
151 purposes. The board shall provide for applications, set
152 guidelines and establish procedures for distributing grants to
153 counties, including a process for appealing an adverse
154 decision on a grant application. Expenditures from the
155 account shall be for the purposes set forth in this section,
156 including the cost of additional staff of the Division of
157 Archives and History.



CHAPTER 187

(Com. Sub. for H.B. 4082 - By Delegate Spencer)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5-10-14, §5-10-15b and §5-10-27c of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying transfer of retroactive service credit in the Public Employees Retirement

System for certain members of the State Police Death, Disability and Retirement Fund; making technical changes by substituting the term “member” for “employee”; and permitting direct rollovers in any amount from the Public Employees Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-10-14, §5-10-15b and §5-10-27c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-14. Service credit; retroactive provisions.

§5-10-15b. Credit for public employment in another state.

§5-10-27c. Direct rollovers.

§5-10-14. Service credit; retroactive provisions.

1 (a) The Board of Trustees shall credit each member with
2 the prior service and contributing service to which he or she
3 is entitled based upon rules adopted by the board of trustees
4 and based upon the following:

5 (1) In no event may less than ten days of service rendered
6 by a member in any calendar month be credited as a month
7 of service: *Provided*, That for employees of the State
8 Legislature whose term of employment is otherwise
9 classified as temporary and who are employed to perform
10 services required by the Legislature for its regular sessions or
11 during the interim between regular sessions and who have
12 been or are so employed during regular sessions or during the
13 interim between regular sessions in seven consecutive
14 calendar years, service credit of one month shall be awarded
15 for each ten days employed in the interim between regular
16 sessions, which interim days shall be cumulatively calculated

17 so that any ten days, regardless of calendar month or year,
18 shall be calculated toward any award of one month of service
19 credit;

20 (2) Except for hourly employees, ten or more months of
21 service credit earned in any calendar year shall be credited as
22 a year of service: *Provided*, That no more than one year of
23 service may be credited to any member for all service
24 rendered by him or her in any calendar year and no days may
25 be carried over by a member from one calendar year to
26 another calendar year where the member has received a full-
27 year credit for that year; and

28 (3) Service may be credited to a member who was
29 employed by a political subdivision if his or her employment
30 occurred within a period of thirty years immediately
31 preceding the date the political subdivision became a
32 participating public employer.

33 (b) The Board of Trustees shall grant service credit to
34 employees of boards of health, the Clerk of the House of
35 Delegates and the Clerk of the State Senate or to any former
36 and present member of the State Teachers Retirement System
37 who have been contributing members for more than three
38 years, for service previously credited by the State Teachers
39 Retirement System and shall require the transfer of the
40 member's contributions to the system and shall also require
41 a deposit, with interest, of any withdrawals of contributions
42 any time prior to the member's retirement. Repayment of
43 withdrawals shall be as directed by the Board of Trustees.

44 (c) Court reporters who are acting in an official capacity,
45 although paid by funds other than the county commission or
46 State Auditor, may receive prior service credit for time
47 served in that capacity.

48 (d) Active members who previously worked in CETA
49 (Comprehensive Employment and Training Act) may receive

50 service credit for time served in that capacity: *Provided*,
51 That in order to receive service credit under the provisions of
52 this subsection the following conditions must be met: (1)
53 The member must have moved from temporary employment
54 with the participating employer to permanent full-time
55 employment with the participating employer within one
56 hundred twenty days following the termination of the
57 member's CETA employment; (2) the board must receive
58 evidence that establishes to a reasonable degree of certainty
59 as determined by the board that the member previously
60 worked in CETA; and (3) the member shall pay to the board
61 an amount equal to the employer and employee contribution
62 plus interest at the amount set by the board for the amount of
63 service credit sought pursuant to this subsection: *Provided*,
64 *however*, That the maximum service credit that may be
65 obtained under the provisions of this subsection is two years:
66 *Provided further*, That a member must apply and pay for the
67 service credit allowed under this subsection and provide all
68 necessary documentation by the thirty-first day of March,
69 two thousand three: *And provided further*, That the board
70 shall exercise due diligence to notify affected employees of
71 the provisions of this subsection.

72 (e)(1) Employees of the State Legislature whose terms of
73 employment are otherwise classified as temporary and who
74 are employed to perform services required by the Legislature
75 for its regular sessions or during the interim time between
76 regular sessions shall receive service credit for the time
77 served in that capacity in accordance with the following. For
78 purposes of this section, the term "regular session" means day
79 one through day sixty of a sixty-day legislative session or day
80 one through day thirty of a thirty-day legislative session.
81 Employees of the State Legislature whose term of
82 employment is otherwise classified as temporary and who are
83 employed to perform services required by the Legislature for
84 its regular sessions or during the interim time between
85 regular sessions and who have been or are employed during
86 regular sessions or during the interim time between regular

87 sessions in seven consecutive calendar years, as certified by
88 the Clerk of the House in which the employee served, shall
89 receive service credit of six months for all regular sessions
90 served, as certified by the Clerk of the House in which the
91 employee served, or shall receive service credit of three
92 months for each regular thirty-day session served prior to one
93 thousand nine hundred seventy-one: *Provided*, That
94 employees of the State Legislature whose term of
95 employment is otherwise classified as temporary and who are
96 employed to perform services required by the Legislature for
97 its regular sessions and who have been or are employed
98 during the regular sessions in thirteen consecutive calendar
99 years as either temporary employees or full-time employees
100 or a combination thereof, as certified by the Clerk of the
101 House in which the employee served, shall receive a service
102 credit of twelve months for each regular session served, as
103 certified by the Clerk of the House in which the employee
104 served: *Provided, however*, That the amendments made to
105 this subsection during the two thousand two regular session
106 of the Legislature only apply to employees of the Legislature
107 who are employed by the Legislature as either temporary
108 employees or full-time employees as of the first day of
109 January, two thousand two, or who become employed by the
110 Legislature as temporary or full-time employees for the first
111 time after the first day of January, two thousand two.
112 Employees of the State Legislature whose terms of
113 employment are otherwise classified as temporary and who
114 are employed to perform services required by the Legislature
115 during the interim time between regular sessions shall receive
116 service credit of one month for each ten days served during
117 the interim between regular sessions, which interim days
118 shall be cumulatively calculated so that any ten days,
119 regardless of calendar month or year, shall be calculated
120 toward any award of one month of service credit: *Provided*
121 *further*, That no more than one year of service may be
122 credited to any temporary legislative employee for all service
123 rendered by that employee in any calendar year and no days
124 may be carried over by a temporary legislative employee

125 from one calendar year to another calendar year where the
126 member has received a full year credit for that year. Service
127 credit awarded for legislative employment pursuant to this
128 section shall be used for the purpose of calculating that
129 member's retirement annuity, pursuant to section twenty-two
130 of this article, and determining eligibility as it relates to
131 credited service, notwithstanding any other provision of this
132 section. Certification of employment for a complete
133 legislative session and for interim days shall be determined
134 by the Clerk of the House in which the employee served,
135 based upon employment records. Service of fifty-five days of
136 a regular session constitutes an absolute presumption of
137 service for a complete legislative session and service of
138 twenty-seven days of a thirty-day regular session occurring
139 prior to one thousand nine hundred seventy-one constitutes
140 an absolute presumption of service for a complete legislative
141 session. Once a legislative employee has been employed
142 during regular sessions for seven consecutive years or has
143 become a full-time employee of the Legislature, that
144 employee shall receive the service credit provided in this
145 section for all regular and interim sessions and interim days
146 worked by that employee, as certified by the Clerk of the
147 House in which the employee served, regardless of when the
148 session or interim legislative employment occurred: *And*
149 *provided further*, That regular session legislative employment
150 for seven consecutive years may be served in either or both
151 houses of the Legislature.

152 (2) For purposes of this section, employees of the Joint
153 Committee on Government and Finance are entitled to the
154 same benefits as employees of the House of Delegates or the
155 Senate: *Provided*, That for joint committee employees whose
156 terms of employment are otherwise classified as temporary,
157 employment in preparation for regular sessions, certified by
158 the legislative manager as required by the Legislature for its
159 regular sessions, shall be considered the same as employment
160 during regular sessions to meet service credit requirements
161 for sessions served.

162 (f) Any employee may purchase retroactive service credit
163 for periods of employment in which contributions were not
164 deducted from the employee's pay. In the purchase of service
165 credit for employment prior to the year one thousand nine
166 hundred eighty-nine in any department, including the
167 Legislature, which operated from the General Revenue Fund
168 and which was not expressly excluded from budget
169 appropriations in which blanket appropriations were made for
170 the state's share of public employees' retirement coverage in
171 the years prior to the year one thousand nine hundred eighty-
172 nine, the employee shall pay the employee's share. Other
173 employees shall pay the state's share and the employee's
174 share to purchase retroactive service credit. Where an
175 employee purchases service credit for employment which
176 occurred after the year one thousand nine hundred eighty-
177 eight, that employee shall pay for the employee's share and
178 the employer shall pay its share for the purchase of
179 retroactive service credit: *Provided*, That no legislative
180 employee and no current or former member of the
181 Legislature may be required to pay any interest or penalty
182 upon the purchase of retroactive service credit in accordance
183 with the provisions of this section where the employee was
184 not eligible to become a member during the years for which
185 he or she is purchasing retroactive credit or had the employee
186 attempted to contribute to the system during the years for
187 which he or she is purchasing retroactive service credit and
188 such contributions would have been refused by the board:
189 *Provided, however*, That a legislative employee purchasing
190 retroactive credit under this section does so within twenty-
191 four months of becoming a member of the system or no later
192 than the last day of December, two thousand eight, whichever
193 occurs last: *Provided further*, That once a legislative
194 employee becomes a member of the retirement system, he or
195 she may purchase retroactive service credit for any time he or
196 she was employed by the Legislature and did not receive
197 service credit. Any service credit purchased shall be credited
198 as six months for each sixty-day session worked, three
199 months for each thirty-day session worked or twelve months

200 for each sixty-day session for legislative employees who have
201 been employed during regular sessions in thirteen
202 consecutive calendar years, as certified by the Clerk of the
203 House in which the employee served, and credit for interim
204 employment as provided in this subsection: *And provided*
205 *further*, That this legislative service credit shall also be used
206 for months of service in order to meet the sixty-month
207 requirement for the payments of a temporary legislative
208 employee member's retirement annuity: *And provided*
209 *further*, That no legislative employee may be required to pay
210 for any service credit beyond the actual time he or she
211 worked regardless of the service credit which is credited to
212 him or her pursuant to this section: *And provided further*,
213 That any legislative employee may request a recalculation of
214 his or her credited service to comply with the provisions of
215 this section at any time.

216 (g)(1) Notwithstanding any provision to the contrary, the
217 seven consecutive calendar years requirement and the
218 thirteen consecutive calendar years requirement and the
219 service credit requirements set forth in this section shall be
220 applied retroactively to all periods of legislative employment
221 prior to the passage of this section, including any periods of
222 legislative employment occurring before the seven
223 consecutive and thirteen consecutive calendar years
224 referenced in this section: *Provided*, That the employee has
225 not retired prior to the effective date of the amendments made
226 to this section in the two thousand two regular session of the
227 Legislature.

228 (2) The requirement of seven consecutive years and the
229 requirement of thirteen consecutive years apply retroactively
230 to all legislative employment prior to the effective date of the
231 two thousand six amendments to this section.

232 (h) The Board of Trustees shall grant service credit to any
233 former or present member of the State Police Death,
234 Disability and Retirement Fund who has been a contributing

235 member of this system for more than three years for service
236 previously credited by the State Police Death, Disability and
237 Retirement Fund if the member transfers all of his or her
238 contributions to the State Police Death, Disability and
239 Retirement Fund to the system created in this article,
240 including repayment of any amounts withdrawn any time
241 from the State Police Death, Disability and Retirement Fund
242 by the member seeking the transfer allowed in this
243 subsection: *Provided*, That there shall be added by the
244 member to the amounts transferred or repaid under this
245 subsection an amount which shall be sufficient to equal the
246 contributions he or she would have made had the member
247 been under the Public Employees Retirement System during
248 the period of his or her membership in the State Police Death,
249 Disability and Retirement Fund, excluding contributions on
250 lump sum payment for annual leave, plus interest at a rate
251 determined by the board.

252 (i) The provisions of section twenty-two-h of this article
253 are not applicable to the amendments made to this section
254 during the two thousand six regular session.

§5-10-15b. Credit for public employment in another state.

1 (a) Any member of the retirement system who has
2 previously been employed in public employment in any other
3 state of the United States is entitled to receive credited
4 service for the time of public employment in that state, not to
5 exceed five years, if the member substantiates by appropriate
6 documentation or evidence his or her public employment in
7 another state and makes contributions as required: *Provided*,
8 That the member is not entitled to receive the credited service
9 if the employee is vested or entitled to be vested in a
10 retirement system of the state in which the employment credit
11 was earned and the member is entitled to service credit in that
12 retirement system for the employment period for which the
13 applicant seeks credited service in West Virginia: *Provided*,
14 *however*, That the service credit from the other state may not

15 be used to meet West Virginia's eligibility requirements for
16 retirement or vesting.

17 Members entitled to out-of-state service credit under the
18 provisions of this section shall make additional contribution
19 to the retirement system equal to the actuarial equivalent of
20 the amount which would have been contributed, together
21 with earnings thereon, by the member and the employer, had
22 the member been covered during the period of the retroactive
23 service credit.

24 (b) In any case of doubt as to the period of service to be
25 credited a member under the provisions of this section, the
26 Board of Trustees has the final power to determine this
27 period.

§5-10-27c. 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 system, a distributee may elect, at the time and in
6 the manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 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: (i) 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; (ii) any distribution to the extent the distribution is
21 required under Section 401(a)(9) of the Internal Revenue
22 Code; (iii) 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; and (iv) any hardship distribution
26 described in Section 401(k)(2)(B)(i)(iv) of the Internal
27 Revenue Code. For distributions after the thirty-first day of
28 December, two thousand one, a portion of a distribution shall
29 not fail to be an eligible rollover distribution merely because
30 the portion consists of after-tax employee contributions
31 which are not includable in gross income. However, this
32 portion may be paid only to an individual retirement account
33 or annuity described in Section 408(a) or (b) of the Internal
34 Revenue Code, or to a qualified defined contribution plan
35 described in Section 401(a) or 403(a) of the Internal Revenue
36 Code that agrees to separately account for amounts
37 transferred, including separately accounting for the portion of
38 the distribution which is includable in gross income and the
39 portion of the distribution which is not includable.

40 (2) "Eligible retirement plan" means an individual
41 retirement account described in Section 408(a) of the Internal
42 Revenue Code, an individual retirement annuity described in
43 Section 408(b) of the Internal Revenue Code, an annuity plan
44 described in Section 403(a) of the Internal Revenue Code or
45 a qualified plan described in Section 401(a) of the Internal
46 Revenue Code that accepts the distributee's eligible rollover
47 distribution: *Provided*, That in the case of an eligible
48 rollover distribution to the surviving spouse, an eligible
49 retirement plan is an individual retirement account or
50 individual retirement annuity. For distributions after the
51 thirty-first day of December, two thousand one, an eligible
52 retirement plan also means an annuity contract described in
53 Section 403(b) of the Internal Revenue Code and an eligible
54 plan under Section 457(b) of the Internal Revenue Code
55 which is maintained by a state, political subdivision of a
56 state, or any agency or instrumentality of a state or political

57 subdivision of a state and which agrees to separately account
58 for amounts transferred into the plan from this system.

59 (3) "Distributee" means an employee or former
60 employee. In addition, the employee's or former employee's
61 surviving spouse and the employee's or former employee's
62 spouse or former spouse who is the alternate payee under a
63 qualified domestic relations order, as defined in Section
64 414(p) of the Internal Revenue Code with respect to
65 governmental plans, are distributees with regard to the
66 interest of the spouse or former spouse.

67 (4) "Direct rollover" means a payment by the retirement
68 system to an eligible retirement plan.

69 (b) Nothing in this section may be construed as
70 permitting rollovers into this system or any other system
71 administered by the retirement board.



CHAPTER 188

(Com. Sub. for S.B. 201 - By Senator Foster)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §5-10A-2, §5-10A-3, §5-10A-4, §5-10A-5, §5-10A-6, §5-10A-7 and §5-10A-8 of the Code of West Virginia, 1931, as amended, all relating to disqualification for public retirement benefits; adding the definition of "former participant"; providing for termination of retirement benefits in all public retirement plans of former and present participants who have rendered less than honorable service; and providing for retention of vested employer contributions for members of

the Teachers' Defined Contribution Retirement System whose benefits are terminated for less than honorable service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

§5-10A-5. Termination of benefits.

§5-10A-6. Refund of contributions.

§5-10A-7. Eligibility for new participation upon rehabilitation.

§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.

§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 of this
4 chapter; each municipal employees retirement plan pursuant
5 to article twenty-two, chapter eight of this code; each
6 policemen's and firemen's pension and relief fund pursuant to
7 article twenty-two, chapter eight of this code; the West
8 Virginia State Police Death, Disability and Retirement Fund
9 pursuant to article two, chapter fifteen of this code; the West
10 Virginia State Police Retirement System pursuant to article
11 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; the

17 higher education retirement plan and supplemental retirement
18 plans pursuant to section four-a, article twenty-three, chapter
19 eighteen of this code; the Judges' Retirement System
20 pursuant to article nine, chapter fifty-one of this code; the
21 West Virginia Emergency Medical Services Retirement
22 System pursuant to article five-v, chapter sixteen of this code;
23 and any other plan established pursuant to this code for the
24 payment of pension, annuity, disability or other benefits to
25 any person by reason of his or her service as an officer or
26 employee of this state or of any political subdivision, agency
27 or instrumentality thereof, whenever the plan is supported, in
28 whole or in part, by public 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 or former participant in a
32 retirement plan.

33 (c) "Benefits" means pension, annuity, disability or any
34 other benefits granted pursuant to a retirement plan.

35 (d) "Conviction" means a conviction on or after the
36 effective date of this article in any federal or state court of
37 record whether following a plea of guilty, not guilty or nolo
38 contendere and whether or not the person convicted was
39 serving as an officer or employee of a public employer at the
40 time of the conviction.

41 (e) "Former participant" means any person who is no
42 longer eligible to receive any benefit under a retirement plan
43 because full distribution has occurred.

44 (f) "Less than honorable service" means:

45 (1) Impeachment and conviction of a participant or
46 former participant under the provisions of section nine,
47 article four of the Constitution of West Virginia, except for
48 a misdemeanor;

49 (2) Conviction of a participant or former participant of a
50 felony for conduct related to his or her office or employment
51 which he or she committed while holding the office or during
52 the employment; or

53 (3) Conduct of a participant or former participant which
54 constitutes all of the elements of a crime described in either
55 subdivision (1) or (2) of this subsection but for which the
56 participant or former participant was not convicted because:

57 (i) Having been indicted or having been charged in an
58 information for the crime, he or she made a plea bargaining
59 agreement pursuant to which he or she pleaded guilty to or
60 nolo contendere to a lesser crime: *Provided*, That the lesser
61 crime is a felony containing all the elements described in
62 subdivision (1) or (2) of this subsection; or

63 (ii) Having been indicted or having been charged in an
64 information for the crime, he or she was granted immunity
65 from prosecution for the crime.

66 (g) "Participant" means any person eligible for or
67 receiving any benefit under a retirement plan on account of
68 his or her service as an officer or employee for a public
69 employer.

70 (h) "Public employer" means the State of West Virginia
71 and any political subdivision, agency, or instrumentality
72 thereof for which there is established a retirement plan.

73 (i) "Supervisory board" or "board" means the
74 Consolidated Public Retirement Board; the board of trustees
75 of any municipal retirement fund; the board of trustees of any
76 policemen's or firemen's retirement plan; the governing board
77 of any supplemental retirement plan instituted pursuant to
78 authority granted by section four-a, article twenty-three,
79 chapter eighteen of this code; and any other board,
80 commission or public body having the duty to supervise and
81 operate any retirement plan.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

1 (a) Whenever a supervisory board, upon receipt of a
2 verified complaint or otherwise, has reasonable cause to
3 believe that a participant or former participant rendered less
4 than honorable service as defined in section two of this
5 article, it shall notify the affected participant, former
6 participant or beneficiary that it believes that the participant
7 or former participant rendered less than honorable service
8 and that the participant, former participant or beneficiary is
9 thereby ineligible to receive benefits. A supervisory board
10 may not issue a notice:

11 (1) If more than two years have elapsed since the
12 judgment of conviction upon which the notice is based
13 became final; or

14 (2) In cases described in subdivision (3), subsection (f),
15 section two of this article, if more than two years have
16 elapsed since, as the case may be: The plea bargaining
17 agreement or the grant of immunity; or

18 (3) With respect to conduct which occurred prior to the
19 effective date of this article.

20 (b) The notice shall contain a concise statement of the
21 reasons why the board believes that the participant or former
22 participant rendered less than honorable service and shall be
23 made either by personal service or by certified mail, return
24 receipt requested, to the address which the participant, former
25 participant or beneficiary maintains for purposes of
26 corresponding with the board. If notice is made by certified
27 mail, service shall be considered complete upon mailing and
28 a completed receipt constitutes proof of the receipt of the
29 notice. The notice shall inform the participant, former
30 participant or beneficiary that he or she has the right to
31 demand that the board seek a determination in circuit court of
32 his or her eligibility for benefits and membership in the

33 retirement plan by notifying the board of the demand within
34 forty days. The notice shall also inform the participant,
35 former participant or beneficiary that the board will terminate
36 the benefits in accordance with section four of this article and
37 refund the participant's or former participant's contributions
38 with interest, less benefits previously paid as provided in
39 section six of this article if the participant, former participant
40 or beneficiary either waives the right to demand that the
41 board take the matter before the circuit court or fails to
42 respond to the board's notice within forty days after service.

**§5-10A-4. Determination by circuit court of ineligibility;
jurisdiction; appeal.**

1 (a) If a participant, former participant or beneficiary
2 informs the supervisory board within forty days after service
3 of the notice as provided in section three of this article that he
4 or she demands that the board seek a determination in circuit
5 court, the board shall immediately file a petition in the circuit
6 court in the county in which the board is located or in which
7 the participant, former participant or beneficiary resides
8 seeking that the court determine that the participant or former
9 participant rendered less than honorable service as defined in
10 section two of this article and that the affected participant,
11 former participant or beneficiary is thereby ineligible to
12 receive benefits. The circuit courts have jurisdiction to make
13 the determinations.

14 (b) Upon the filing of a petition by a supervisory board,
15 the circuit court shall give to the affected parties notice and
16 an opportunity to be heard consistent with the demands of
17 due process and necessary for a fair determination of the
18 matter. Upon completion of its hearings the court shall make
19 such findings of fact and conclusions of law as are
20 appropriate. Except in the case of exigent circumstances, the
21 court shall make its determination within sixty days of the
22 filing of the petition by the board.

23 (c) A determination of the circuit court shall be a final
24 order which may be appealed to the Supreme Court of
25 Appeals in the same manner as decisions in other civil
26 actions.

§5-10A-5. Termination of benefits.

1 (a) The board shall terminate a participant's, former
2 participant's or beneficiary's membership in any and all plans
3 in which he or she is or has been a member and shall not
4 thereafter pay any benefits to the participant, former
5 participant or his or her beneficiaries if an affected
6 participant, former participant or beneficiary either waives
7 the right to demand that the board seek a determination of
8 eligibility in circuit court as set forth in section three of this
9 article or fails to respond to the notice within forty days after
10 service thereof as set forth in said section or if a circuit court
11 has determined that the participant or former participant
12 rendered less than honorable service in accordance with
13 section four of this article: *Provided*, That this article does
14 not authorize the termination of benefits received by a
15 beneficiary that are received as a result of the beneficiary's
16 own membership in a plan or the beneficiary's status as a
17 beneficiary of a member other than the participant or former
18 participant.

19 (b) If the participant or former participant is deceased and
20 there are two or more beneficiaries at least one of whom has
21 given the board timely notice that he or she wishes to
22 exercise the right to demand that the board seek a
23 determination of eligibility in circuit court, the board shall
24 take the action as provided in this section with respect to all
25 the beneficiaries only upon a determination by the court that
26 the participant or former participant has rendered less than
27 honorable service.

§5-10A-6. Refund of contributions.

1 The supervisory board shall refund to a participant or
2 beneficiary terminated from benefits by section five of this

3 article the contributions of the participant in the same manner
4 and with the same interest as provided to those participants
5 or beneficiaries otherwise eligible to withdraw the
6 participant's contributions under the retirement plan, less the
7 amount of any benefits which the participant or his or her
8 beneficiaries have previously received: *Provided*, That a
9 member of the Teachers' Defined Contribution Retirement
10 System whose benefits have been terminated pursuant to
11 section five of this article shall be refunded only his or her
12 employee contributions and the earnings on those
13 contributions. Any vested employer contributions shall
14 remain in the Teachers' Defined Contribution Retirement
15 System and be used to offset future employer contributions
16 for each contributing employer.

§5-10A-7. Eligibility for new participation upon rehabilitation.

1 Nothing in this article prohibits a participant or former
2 participant made ineligible for benefits by virtue of
3 conviction of a crime under this article and who has paid the
4 full penalty imposed by law for the crime from accepting a
5 position as an officer or employee of the same or different
6 public employer and joining a retirement plan as a new
7 member; but the new member and his or her beneficiaries
8 shall remain forever ineligible for any benefits arising from
9 the new member's former participation in a retirement plan.

**§5-10A-8. Setoff; unpaid benefits subject to execution, freezing
of account upon finding of probable cause.**

1 (a) The State of West Virginia or any of its political
2 subdivisions shall have the right of setoff against any unpaid
3 benefits which have accrued or may thereafter accrue under
4 the plan, including any contributions by the participant or
5 former participant for any claim caused by less than
6 honorable service by the participant or former participant.

7 (b) Notwithstanding any provision of this article to the
8 contrary, upon being notified by an agency of the State of

9 West Virginia or any of its political subdivisions that an
10 employee has been charged by criminal complaint,
11 indictment or information with an offense which constitutes
12 less than honorable service and larceny of funds or property
13 from a state agency or political subdivision, the retirement
14 board shall withhold payment or refunding of any
15 participant's or former participant's contributions until it
16 receives an order from a court of competent jurisdiction
17 reflecting that the charge has been dismissed, reflecting that
18 the participant or former participant is found not guilty,
19 ordering the release of all or part of the funds or directing
20 restitution to the state or political subdivision.

21 (c) Notwithstanding any provision of the law to the
22 contrary, any unpaid benefits which have accrued or may
23 thereafter accrue are subject to execution, garnishment,
24 attachment or any other legal process for collection of a
25 judgment for the recovery of loss or damages incurred by the
26 state or its political subdivision caused by the participant's or
27 former participant's less than honorable service.

CHAPTER 189

(Com. Sub. for S.B. 208 - By Senators Foster and Plymale)

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, all relating to government employees retirement plans; adding the West Virginia Emergency Medical Services Retirement System to, and clarifying that all other retirement systems administered by the Consolidated Public Retirement Board are included in, the

definition of “retirement systems” for purposes of the employer pick-up provisions; clarifying that all participating public employers in retirement systems covered by this article are included in the definition of “participating public employer”; and setting forth requirements for member contributions to be picked up for federal tax purposes by participating public employers in retirement systems covered by this article in accordance with revised guidance relating to same from the Internal Revenue Service.

Be it enacted by the Legislature of West Virginia:

That §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

§5-10C-4. Pick-up of members' contributions by participating public employers.

§5-10C-5. Savings clause.

§5-10C-3. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts credited to a member's individual account in the
6 members' deposit fund and includes both contributions
7 deducted from the compensation of a member and
8 contributions of a member picked up and paid by the
9 member's participating public employer, plus applicable
10 interest thereon.

11 (2) "Board of trustees" means, as appropriate: The
12 Consolidated Public Retirement Board created in article ten-d

13 of this chapter; the Higher Education Policy Commission; the
14 West Virginia Council for Community and Technical College
15 Education; the institutional governing boards responsible for
16 the higher education retirement plan and supplemental
17 retirement plan; or the boards of trustees of the firemen's and
18 policemen's pension and relief funds created in article
19 twenty-two, chapter eight of this code.

20 (3) "Employee" means any person, whether appointed,
21 elected or under contract, providing services for a public
22 employer for which compensation is paid and who is a
23 member of the applicable retirement system.

24 (4) "Member" means any person who has accumulated
25 contributions standing to his or her credit in a retirement
26 system.

27 (5) "Member contributions" means, as appropriate: The
28 contributions required by section twenty-nine, article ten of
29 this chapter five from employees who are members of the
30 West Virginia Public Employees Retirement System; the
31 contributions required by section twenty-six, article two,
32 chapter fifteen of this code from employees who are
33 members of the West Virginia State Police Death, Disability
34 and Retirement Fund; the contributions required by section
35 seven, article fourteen-d, chapter seven of this code from
36 employees who are members of the Deputy Sheriff's
37 Retirement System; the contributions required by section
38 fourteen, article seven-a, chapter eighteen of this code from
39 employees who are members of the State Teachers
40 Retirement System; the contributions authorized or required
41 by section fourteen-a, article seven-a of said chapter or by
42 section four-a, article twenty-three of said chapter from
43 employees who are members of the West Virginia higher
44 education retirement plan and supplemental retirement plan;
45 the contributions required by section four, article nine,
46 chapter fifty-one of this code from employees who are
47 members of the Judges' Retirement System; the contributions
48 required by section nineteen, article twenty-two, chapter

49 eight of this code from employees who are members of
50 municipal firemen's and policemen's pension and relief funds;
51 the contributions required by section nine, article seven-b,
52 chapter eighteen of this code from employees who are
53 members of the Teachers' Defined Contribution Retirement
54 System; the contributions required by section five, article
55 two-a, chapter fifteen of this code from the employees who
56 are members of the West Virginia State Police Retirement
57 System; or the contributions required by section eight, article
58 five-v, chapter sixteen of this code from employees who are
59 members of the West Virginia Emergency Medical Services
60 Retirement System.

61 (6) "Participating public employer" means the State of
62 West Virginia, any board, commission, department,
63 institution or spending unit and includes any agency with
64 full-time employees, created by rule of the Supreme Court of
65 Appeals, which for the purpose of this article shall be
66 considered a department of state government and county
67 boards of education with respect to teachers employed by
68 them; any political subdivision in the state which has elected
69 to cover its employees, as defined in this article, under the
70 West Virginia Public Employees Retirement System; any
71 political subdivision in the state which has elected to cover its
72 employees, as defined in this article, under the Deputy
73 Sheriff Retirement System; any political subdivision in the
74 state which has elected to cover its employees, as defined in
75 this article, under the West Virginia Emergency Medical
76 Services Retirement System; and any political subdivision in
77 this state which is subject to the provisions of article twenty-
78 two, chapter eight of this code.

79 (7) "Political subdivision" means the State of West
80 Virginia, a county, city or town in the state; a school
81 corporation or corporate unit; any separate corporation or
82 instrumentality established by one or more counties, cities or
83 towns, as permitted by law; any corporation or
84 instrumentality supported in most part by counties, cities or
85 towns; any public corporation charged by law with the

86 performance of a governmental function and whose
87 jurisdiction is coextensive with one or more counties, cities
88 or towns, any agency or organization established by or
89 approved by the Department of Health and Human Resources
90 for the provision of community health or mental retardation
91 services and which is supported in part by state, county or
92 municipal funds.

93 (8) "Retirement system" means, as appropriate: The West
94 Virginia Public Employees Retirement System created in
95 article ten of this chapter; the West Virginia State Police
96 Death, Disability and Retirement Fund created in sections
97 twenty-six through thirty-eight, inclusive, article two, chapter
98 fifteen of this code; the West Virginia Deputy Sheriff
99 Retirement System created in article fourteen-d, chapter
100 seven of this code; the State Teachers Retirement System
101 created in article seven-a, chapter eighteen of this code; the
102 West Virginia higher education retirement plan and
103 supplemental retirement plan created in section fourteen-a,
104 article seven-a of said chapter and section four-a, article
105 twenty-three of said chapter; the Judges' Retirement System
106 created in article nine, chapter fifty-one of this code; the
107 firemen's or policemen's pension and relief funds created in
108 section sixteen, article twenty-two, chapter eight of this code;
109 the Teachers' Defined Contribution Retirement System
110 created in article seven-b, chapter eighteen of this code; the
111 West Virginia State Police Retirement System created in
112 article two-a, chapter fifteen of this code; or the West
113 Virginia Emergency Medical Services Retirement System
114 created in article five-v, chapter sixteen of this code.

115 (9) "Teacher" has the meaning ascribed to it in section
116 three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

1 (a) The State of West Virginia for its public employees
2 and county boards of education for its teachers shall pick-up

3 and pay the contributions which the employees are required
4 by law to make to the retirement system in which they are a
5 member for all compensation earned by its member
6 employees after the thirtieth day of June, one thousand nine
7 hundred eighty-six. Any political subdivision that is a
8 participating public employer in the West Virginia Public
9 Employees Retirement System shall pick-up and pay the
10 contributions which the employees are required by law to
11 make to the retirement system in which they are members for
12 all compensation earned by its member employees after the
13 first day of January, one thousand nine hundred ninety-five.
14 Counties shall pick-up and pay the contributions which the
15 employees are required by law to make to the Deputy Sheriff
16 Retirement System in which they are members for all
17 compensation earned by its member employees after the
18 thirtieth day of June, one thousand nine hundred ninety-eight.
19 Any election made by a political subdivision to pick-up and
20 pay employee contributions prior to the first day of January,
21 one thousand nine hundred ninety-five, remains in effect and
22 is not altered or amended by the amendments made to this
23 section during the regular legislative session, one thousand
24 nine hundred ninety-five. Unless a different commencement
25 date for pick-up is specifically stated in this section, all
26 participating public employers under this article, with respect
27 to retirement systems subject to this article, shall pick-up and
28 pay the contributions which their employees are required by
29 law to make to the retirement system in which they are a
30 member from and after the commencement of the required
31 employee contributions.

32 (b) When the participating public employer picks up and
33 pays the contributions of its member employees, the
34 contributions, although designated by statute as employee
35 contributions, shall be treated as employer contributions in
36 determining the tax treatment thereof under article twenty-
37 one, chapter eleven of this code and the federal Internal
38 Revenue Code of 1986, as amended, and the contributions
39 shall not be included in the gross income of the employee in
40 determining his or her tax treatment under those provisions

41 until they are distributed or made available to the employee
42 or his or her beneficiary. The participating public employer
43 shall pay these employee contributions from the same source
44 of funds used in paying compensation to the employee, by
45 effecting an equal cash reduction in the gross salary of the
46 employee, or by an off-set against future salary increases, or
47 by a combination of reduction in gross salary and off-set
48 against future salary increases. In no event shall any
49 employee of a participating public employer have the right to
50 opt out of pick-up or to elect to receive the picked-up and
51 contributed amounts directly instead of having them paid by
52 the participating public employer into the retirement system
53 pursuant to this article.

54 (c) When employee contributions are picked up and paid
55 by the participating public employer, they shall be treated by
56 the board of trustees in the same manner and to the same
57 extent as employee contributions made prior to the date on
58 which employee contributions are picked up by the
59 participating public employer.

60 (d) The amount of employee contributions picked up by
61 the participating public employer shall be paid to the
62 retirement system in the manner and form and in the
63 frequency required by the board of trustees and shall be
64 accompanied by supporting data that the board of trustees
65 may prescribe. When paid to the retirement system, each of
66 these amounts shall be credited to the deposit fund account of
67 the member for whom the contribution was picked up and
68 paid by the participating public employer.

§5-10C-5. Savings clause.

1 In enacting this article, it is the intent of the Legislature
2 that the retirement plan created pursuant to this article and
3 those created pursuant to article ten of this chapter; article
4 fourteen-d, chapter seven of this code; article two, chapter
5 fifteen of this code; article seven-a, chapter eighteen; article
6 nine, chapter fifty-one; section four-a, article twenty-three,

7 chapter eighteen of this code; section sixteen, article twenty-
8 two, chapter eight of this code; article seven-b, chapter
9 eighteen of this code; article two-a, chapter fifteen of this
10 code; and article five-v, chapter sixteen of this code qualify
11 under Section 401 of the Internal Revenue Code of 1986, as
12 amended, and that the member contributions picked up by the
13 participating public employer qualify under Subsection (h),
14 Section 414 of the Internal Revenue Code of 1986, as
15 amended. If the United States Internal Revenue Service does
16 not approve of certain sections or phraseology of certain
17 sections of this article as being in compliance with the
18 statutes or regulations governing the Internal Revenue
19 Service, the respective boards of trustees, in the adoption of
20 the deferred compensation plan, shall adopt the terminology
21 with respect to those sections that comply with the statutes or
22 regulations governing the Internal Revenue Service.

CHAPTER 190

**(Com. Sub. for S.B. 650 - By Senators Foster, Oliverio
and Plymale)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §16-5V-2, §16-5V-6, §16-5V-8, §16-5V-9, §16-5V-14, §16-5V-18, §16-5V-19, §16-5V-25 and §16-5V-32 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Retirement System; adding and modifying definitions; specifying that members hired after the effective date of this plan are members of the plan as a condition of employment; clarifying language relating to the participation of public employers in this plan; clarifying

language relating to the transfer of Public Employees Retirement System service credit and reinstatement of service as an emergency medical services officer; specifying the date on which contributions are due the fund and providing for delinquency fees for late payments; clarifying language relating to purchase of prior service and providing for delinquency fees for late payments; eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan; allowing distributions totaling less than two hundred dollars within the definition of eligible rollover distribution; clarifying the language relating to the benefit awarded for a duty disability; adding provisions for the payment of additional death benefits; clarifying language relating to the effective date for receipt of a duty disability benefit; and making a correction to the time period for which the Joint Committee on Government and Finance shall conduct an interim study on the potential effects of the implementation of this plan.

Be it enacted by the Legislature of West Virginia:

That §16-5V-2, §16-5V-6, §16-5V-8, §16-5V-9, §16-5V-14, §16-5V-18, §16-5V-19, §16-5V-25 and §16-5V-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5V. EMERGENCY MEDICAL SERVICES
RETIREMENT SYSTEM ACT.**

- §16-5V-2. Definitions.
- §16-5V-6. Members.
- §16-5V-8. Members' contributions; employer contributions.
- §16-5V-9. Transfer from Public Employees Retirement System.
- §16-5V-14. Direct rollovers.
- §16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.
- §16-5V-19. Awards and benefits for disability -- Duty related.
- §16-5V-25. Additional death benefits and scholarships -- Dependent children.
- §16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.

§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's actuary increase the employees' contribution rate to
15 ten 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
24 three-quarter percent for the first twenty years of credited
25 service. The maximum benefit will also be increased from
26 sixty-seven 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 "retirement" on an application supplied by the
67 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) Employment
73 as a full-time 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 the 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 years
90 of service, active military duty, disability service and accrued
91 annual and sick leave service.

92 (l) "Dependent child" means either:

93 (1) An unmarried person under age eighteen who is:

94 (A) A natural child of the member;

95 (B) A legally adopted child of the member;

96 (C) A child who at the time of the member's death was
97 living with the member while the member was an adopting
98 parent during any period of probation; or

99 (D) A stepchild of the member residing in the member's
100 household at the time of the member's death; or

101 (2) Any unmarried child under age twenty-three:

102 (A) Who is enrolled as a full-time student in an
103 accredited college or university;

104 (B) Who was claimed as a dependent by the member for
105 federal income tax purposes at the time of member's death;
106 and

107 (C) Whose relationship with the member is described in
108 paragraph (A), (B) or (C), subdivision (1) of this subsection.

109 (m) "Dependent parent" means the father or mother of the
110 member who was claimed as a dependent by the member for
111 federal income tax purposes at the time of the member's
112 death.

113 (n) "Disability service" means service received by a
114 member, expressed in whole years, fractions thereof or both,
115 equal to one half of the whole years, fractions thereof, or
116 both, during which time a member receives disability benefits
117 under this article.

118 (o) "Early retirement age" means age forty-five or over
119 and completion of twenty years of service.

120 (p) "Effective date" means the first day of January, two
121 thousand eight.

122 (q) "Emergency medical services officer" means an
123 individual employed by the state, county or other political
124 subdivision as a medical professional who is qualified to
125 respond to medical emergencies, aids the sick and injured and
126 arranges or transports to medical facilities, as defined by the
127 West Virginia Office of Emergency Medical Services. This
128 definition is construed to include employed ambulance
129 providers and other services such as law enforcement, rescue
130 or fire department personnel who primarily perform these
131 functions and are not provided any other credited service
132 benefits or retirement plans. These persons may hold the
133 rank of emergency medical technician/basic, emergency
134 medical technician/paramedic, emergency medical
135 services/registered nurse, or others as defined by the West
136 Virginia Office of Emergency Medical Services and the
137 Consolidated Public Retirement Board.

138 (r) "Final average salary" means the average of the
139 highest annual compensation received for covered
140 employment by the member during any five consecutive plan
141 years within the member's last ten years of service while
142 employed, prior to any disability payment. If the member did
143 not have annual compensation for the five full plan years
144 preceding the member's attainment of normal retirement age
145 and during that period the member received disability
146 benefits under this article, then "final average salary" means
147 the average of the monthly salary determined paid to the
148 member during that period as determined under section
149 twenty-two of this article multiplied by twelve. "Final
150 average salary" does not include any lump sum payment for
151 unused, accrued leave of any kind or character.

152 (s) "Full-time employment" means permanent employment
153 of an employee by a participating public employer in a
154 position which normally requires twelve months per year
155 service and requires at least one thousand forty hours per
156 year service in that position.

157 (t) "Fund" means the West Virginia Emergency Medical
158 Services Retirement Fund created by this article.

159 (u) "Hour of service" means:

160 (1) Each hour for which a member is paid or entitled to
161 payment for covered employment during which time active
162 duties are performed. These hours shall be credited to the
163 member for the plan year in which the duties are performed;
164 and

165 (2) Each hour for which a member is paid or entitled to
166 payment for covered employment during a plan year but
167 where no duties are performed due to vacation, holiday,
168 illness, incapacity including disability, layoff, jury duty,
169 military duty, leave of absence or any combination thereof
170 and without regard to whether the employment relationship
171 has terminated. Hours under this subdivision shall be
172 calculated and credited pursuant to West Virginia Division of
173 Labor rules. A member will not be credited with any hours
174 of service for any period of time he or she is receiving
175 benefits under section nineteen or twenty of this article; and

176 (3) Each hour for which back pay is either awarded or
177 agreed to be paid by the employing county commission or
178 political subdivision, irrespective of mitigation of damages.
179 The same hours of service shall not be credited both under
180 subdivision (1) or (2) of this subsection and under this
181 subdivision. Hours under this paragraph shall be credited to
182 the member for the plan year or years to which the award or
183 agreement pertains, rather than the plan year in which the
184 award, agreement or payment is made.

185 (v) "Member" means a person first hired as an emergency
186 medical services officer by an employer which is a
187 participating public employer of the Public Employees
188 Retirement System or the Emergency Medical Services

189 Retirement System after the effective date of this article, as
190 defined in subsection (p) of this section, or an emergency
191 medical services officer of an employer which is a
192 participating public employer of the Public Employees
193 Retirement System first hired prior to the effective date and
194 who elects to become a member pursuant to this article. A
195 member shall remain a member until the benefits to which he
196 or she is entitled under this article are paid or forfeited.

197 (w) "Monthly salary" means the W-2 reportable
198 compensation received by a member during the month.

199 (x) "Normal form" means a monthly annuity which is one
200 twelfth of the amount of the member's accrued benefit which
201 is payable for the member's life. If the member dies before
202 the sum of the payments he or she receives equals his or her
203 accumulated contributions on the annuity starting date, the
204 named beneficiary shall receive in one lump sum the
205 difference between the accumulated contributions at the
206 annuity starting date and the total of the retirement income
207 payments made to the member.

208 (y) "Normal retirement age" means the first to occur of
209 the following:

210 (1) Attainment of age fifty years and the completion of
211 twenty or more years of regular contributory service,
212 excluding active military duty, disability service and accrued
213 annual and sick leave service;

214 (2) While still in covered employment, attainment of at
215 least age fifty years and when the sum of current age plus
216 regular contributory years of service equals or exceeds
217 seventy years;

218 (3) While still in covered employment, attainment of at
219 least age sixty years and completion of ten years of regular
220 contributory service; or

221 (4) Attainment of age sixty-two years and completion of
222 five or more years of regular contributory service.

223 (z) "Political subdivision" means a county, city or town
224 in the state; any separate corporation or instrumentality
225 established by one or more counties, cities or towns, as
226 permitted by law; any corporation or instrumentality
227 supported in most part by counties, cities or towns; and any
228 public corporation charged by law with the performance of a
229 governmental function and whose jurisdiction is coextensive
230 with one or more counties, cities or towns: *Provided*, That
231 any public corporation established under section four, article
232 fifteen, chapter seven of this code is considered a political
233 subdivision solely for the purposes of this article.

234 (aa) "Public Employees Retirement System" means the
235 West Virginia Public Employee's Retirement System created
236 by West Virginia Code.

237 (bb) "Plan" means the West Virginia Emergency Medical
238 Services Retirement System established by this article.

239 (cc) "Plan year" means the twelve-month period
240 commencing on the first day of January of any designated
241 year and ending the following thirty-first day of December.

242 (dd) "Regular interest" means the rate or rates of interest
243 per annum, compounded annually, as the board adopts in
244 accordance with the provisions of this article.

245 (ee) "Retirement income payments" means the monthly
246 retirement income payments payable under the plan.

247 (ff) "Spouse" means the person to whom the member is
248 legally married on the annuity starting date.

249 (gg) "Surviving spouse" means the person to whom the
250 member was legally married at the time of the member's
251 death and who survived the member.

252 (hh) "Totally disabled" means a member's inability to
253 engage in substantial gainful activity by reason of any
254 medically determined physical or mental impairment that can
255 be expected to result in death or that has lasted or can be
256 expected to last for a continuous period of not less than
257 twelve months.

258 For purposes of this subsection:

259 (1) A member is totally disabled only if his or her
260 physical or mental impairment or impairments is so severe
261 that he or she is not only unable to perform his or her
262 previous work as an emergency medical services officer but
263 also cannot, considering his or her age, education and work
264 experience, engage in any other kind of substantial gainful
265 employment which exists in the state regardless of whether:
266 (A) The work exists in the immediate area in which the
267 member lives; (B) a specific job vacancy exists; or (C) the
268 member would be hired if he or she applied for work. For
269 purposes of this article, substantial gainful employment is the
270 same definition as used by the United States Social Security
271 Administration.

272 (2) "Physical or mental impairment" is an impairment
273 that results from an anatomical, physiological or
274 psychological abnormality that is demonstrated by medically
275 accepted clinical and laboratory diagnostic techniques. The
276 board may require submission of a member's annual tax
277 return for purposes of monitoring the earnings limitation.

278 (ii) "Required beginning date" means the first day of
279 April of the calendar year following the later of: (1) The
280 calendar year in which the member attains age seventy and

281 one-half; or (2) the calendar year in which he or she retires or
 282 otherwise separates from covered employment; or (3) for
 283 members who are covered under the Public Employees
 284 Retirement System, their service shall be recognized upon
 285 transfer of assets from the Public Employees Retirement
 286 System according to the provisions of section nine of this
 287 article. Prior service for members not covered under the
 288 Public Employees Retirement System shall be recognized
 289 only upon repayment of amounts covered under the
 290 provisions of section six of this article.

291 (jj) "Year of service" means a member shall, except in his
 292 or her first and last years of covered employment, be credited
 293 with years of service credit based upon the hours of service
 294 performed as covered employment and credited to the
 295 member during the plan year based upon the following
 296 schedule:

297	Hours of Service	Year of Service Credited
298	Less than 500	0
299	500 to 999	1/3
300	1,000 to 1,499	2/3
301	1,500 or more	1

302 During a member's first and last years of covered
 303 employment, the member shall be credited with one twelfth
 304 of a year of service for each month during the plan year in
 305 which the member is credited with an hour of service for
 306 which contributions were received by the fund. A member is
 307 not entitled to credit for years of service for any time period
 308 during which he or she received disability payments under
 309 section nineteen or twenty of this article. Except as
 310 specifically excluded, years of service include covered
 311 employment prior to the effective date.

312 Years of service which are credited to a member prior to
 313 his or her receipt of accumulated contributions upon

314 termination of employment pursuant to section eighteen of
315 this article or section thirty, article ten, chapter five of this
316 code, shall be disregarded for all purposes under this plan
317 unless the member repays the accumulated contributions with
318 interest pursuant to section eighteen of this article or has prior
319 to the effective date made the repayment pursuant to section
320 eighteen, article ten, chapter five of this code.

§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 plan as a condition of employment
5 and upon membership does not qualify for membership in
6 any other retirement system administered by the board, so
7 long as he or 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 this plan: *Provided*, That any emergency medical services
25 officer who does not affirmatively elect to become a member
26 of the plan continues to be eligible for any other retirement

27 system as is, from time to time, offered to other county
28 employees but is ineligible for this plan regardless of any
29 subsequent termination of employment and rehire.

30 (c) Any emergency medical services officer who was
31 employed as an emergency medical services officer prior to
32 the effective date, but was not employed on the effective date
33 of this article, shall become a member upon rehire as an
34 emergency medical services officer. For purposes of this
35 section, the member's years of service and credited service
36 prior to the effective date shall not be counted for any
37 purposes under this plan unless: (1) The emergency medical
38 services officer has not received the return of his or her
39 accumulated contributions in the Public Employees
40 Retirement Fund System pursuant to section thirty, article
41 ten, chapter five of this code; or (2) the accumulated
42 contributions returned to the member from the Public
43 Employees Retirement System have been repaid pursuant to
44 this article. If the conditions of subdivision (1) or (2) of this
45 subsection are met, all years of the emergency medical
46 services officer's covered employment shall be counted as
47 years of service for the purposes of this article.

48 (d) Any emergency medical services officer employed in
49 covered employment on the effective date of this article who
50 has timely elected to transfer into this plan as provided in
51 subsection (b) of this section shall be given credited service
52 at the time of transfer for all credited service then standing to
53 the emergency medical services officer's service credit in the
54 Public Employees Retirement System regardless of whether
55 the credited service (as that term is defined in section two,
56 article ten, chapter five of this code) was earned as an
57 emergency medical services officer. All credited service
58 standing to the transferring emergency medical services
59 officer's credit in the Public Employees Retirement System
60 at the time of transfer into this plan shall be transferred into
61 the plan created by this article and the transferring emergency

62 medical services officer shall be given the same credit for the
63 purposes of this article for all service transferred from the
64 Public Employees Retirement System as that transferring
65 emergency medical services officer would have received
66 from the Public Employees Retirement System as if the
67 transfer had not occurred. In connection with each
68 transferring emergency medical services officer receiving
69 credit for prior employment as provided in this subsection, a
70 transfer from the Public Employees Retirement System to
71 this plan shall be made pursuant to the procedures described
72 in this article: *Provided*, That any member of this plan who
73 has elected to transfer from the Public Employees Retirement
74 System into this plan pursuant to subsection (b) of this
75 section may not, after having transferred into and becoming
76 an active member of this plan, reinstate to his or her credit in
77 this plan any service credit relating to periods in which the
78 member was not in covered employment as an emergency
79 medical services officer and which service was withdrawn
80 from the Public Employees Retirement System prior to his or
81 her elective transfer into this plan.

82 (e) Once made, the election made under this section is
83 irrevocable. All emergency medical services officers
84 employed by an employer which is a participating public
85 employer of the Public Employees Retirement System after
86 the effective date and emergency medical services officers
87 electing to become members as described in this section shall
88 be members as a condition of employment and shall make the
89 contributions required by this article.

90 (f) Notwithstanding any other provisions of this article,
91 any individual who is a leased employee is not eligible to
92 participate in the plan. For purposes of this plan, a "leased
93 employee" means any individual who performs services as an
94 independent contractor or pursuant to an agreement with an
95 employee leasing organization or similar organization. If a
96 question arises regarding the status of an individual as a

97 leased employee, the board has final power to decide the
98 question.

§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 the 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. Any
28 county commission or political subdivision which fails to
29 make any payment due the Emergency Medical Services
30 Retirement Fund by the fifteenth day following the end of
31 each calendar month in which contributions are due may be
32 required to pay the actuarial rate of interest lost on the total

33 amount owed for each day the payment is delinquent.
34 Accrual of the loss of earnings owed by the delinquent
35 county commission or political subdivision commences after
36 the fifteenth day following the end of the calendar month in
37 which contributions are due and continues until receipt of the
38 delinquent amount. Interest compounds daily and the
39 minimum surcharge is fifty dollars.

§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
28 date;

29 (3) Compute the market value of active member assets in
30 the Public Employees Retirement System as of the first day
31 of July, two thousand seven, by reducing the assets value
32 under subdivision one of this subsection by the inactive
33 liabilities under subdivision (2) of this subsection;

34 (4) Compute the actuarial accrued liability for all active
35 Public Employees Retirement System members as of the first
36 day of July, two thousand seven, actuarial valuation date
37 approved by the board;

38 (5) Compute the funded percentage of the active
39 members' actuarial accrued liabilities under the Public
40 Employees Retirement System as of the first day of July, two
41 thousand seven, by dividing the active members' market
42 value of assets under subdivision three of this subsection by
43 the active members' actuarial accrued liabilities under
44 subdivision (4) of this subsection;

45 (6) Compute the actuarial accrued liabilities under the
46 Public Employees Retirement System as of the first day of
47 July, two thousand seven, for active emergency medical
48 services officers transferring to the Emergency Medical
49 Services Retirement System;

50 (7) Determine the assets to be transferred from the Public
51 Employees Retirement System to the Emergency Medical
52 Services Retirement System by multiplying the active
53 members' funded percentage determined under subdivision
54 (5) of this subsection by the transferring active members'
55 actuarial accrued liabilities under the Public Employees
56 Retirement System under subdivision (6) of this subsection
57 and adjusting the asset transfer amount by interest at seven

58 and five-tenths percent for the period from the calculation
59 date of the first day of July, two thousand seven, through the
60 first day of the month in which the asset transfer is to be
61 completed.

62 (c) Once an emergency medical services officer has
63 elected to transfer from the Public Employees Retirement
64 System, transfer of that amount as calculated in accordance
65 with the provisions of subsection (b) of this section by the
66 Public Employees Retirement System shall operate as a
67 complete bar to any further liability to the Public Employees
68 Retirement System and constitutes an agreement whereby the
69 transferring emergency medical services officer forever
70 indemnifies and holds harmless the Public Employees
71 Retirement System from providing him or her any form of
72 retirement benefit whatsoever until that emergency medical
73 services officer obtains other employment which would make
74 him or her eligible to reenter the Public Employees
75 Retirement System with no credit whatsoever for the amounts
76 transferred to the Emergency Medical Services Retirement
77 System.

78 (d) Eligible emergency medical services officers that
79 transfer from plans other than the Public Employees
80 Retirement System shall have service recognized under this
81 plan through the purchase of the service through payment by
82 the member of sixty percent of the actuarial accrued
83 liabilities which would result if the service is credited under
84 the Emergency Medical Services Retirement System subject
85 to the following:

86 (1) The service may be purchased in one-year increments
87 of eligible service or for the total period of eligible service;

88 (2) Payment must begin within twelve months of the
89 effective date of this article;

90 (3) Payment must be made in either a one-time lump sum
91 payment received by the board no later than the thirty-first
92 day of December, two thousand eight, or in regular
93 installment payments payable over sixty months with the
94 initial installment received by the board on or before the
95 thirty-first day of December, two thousand eight;

96 (4) The rate of interest applicable to regular installment
97 payments for the purchase of service shall be the actuarial
98 interest rate assumption as approved by the board for
99 completing the actuarial valuation for the plan year
100 immediately preceding the first day of the plan year in which
101 the service purchase is made, compounded per annum;

102 (5) Once payments commence, selection of the period of
103 service being purchased may not be amended; and

104 (6) Service will be credited only upon receipt by the
105 board of all payments due.

§16-5V-14. Direct rollovers.

1 This section applies to distributions made on or after the
2 first day of January, one thousand nine hundred ninety-three.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 plan, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution paid directly to an eligible retirement
8 plan specified by the distributee in a direct rollover. For
9 purposes of this section, the following definitions apply:

10 (1) "Eligible rollover distribution" means any distribution
11 of all or any portion of the balance to the credit of the
12 distributee, except that an eligible rollover distribution does
13 not include any of the following: (A) Any distribution that is
14 one of a series of substantially equal periodic payments not

15 less frequently than annually made for the life or life
16 expectancy of the distributee or the joint lives or the joint life
17 expectancies of the distributee and the distributee's
18 designated beneficiary, or for a specified period of ten years
19 or more; (B) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (C) the portion of any distribution that is not
22 includable in gross income determined without regard to the
23 exclusion for net unrealized appreciation with respect to
24 employer securities; and (D) any hardship distribution
25 described in Section 401(k) (2) (B) (i) (iv) of the Internal
26 Revenue Code.

27 (2) "Eligible retirement plan" means an individual
28 retirement account described in Section 408(a) of the Internal
29 Revenue Code, an individual retirement annuity described in
30 Section 408(b) of the Internal Revenue Code, an annuity plan
31 described in Section 403(a) of the Internal Revenue Code or
32 a qualified plan described in Section 401(a) of the Internal
33 Revenue Code that accepts the distributee's eligible rollover
34 distribution: *Provided*, That in the case of an eligible rollover
35 distribution to the surviving spouse, an eligible retirement
36 plan is an individual retirement account or individual
37 retirement annuity.

38 (3) "Distributee" means an employee or former
39 employee. In addition, the employee's or former employee's
40 surviving spouse and the employee's or former employee's
41 spouse or former spouse who is the alternate payee under a
42 qualified domestic relations order, as defined in Section
43 414(p) of the Internal Revenue Code with respect to
44 governmental plans, are distributees with regard to the
45 interest of the spouse or former spouse.

46 (4) "Direct rollover" means a payment by the plan to the
47 eligible retirement plan.

§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 ceases employment in covered
9 employment and active participation in this plan and who
10 thereafter becomes reemployed in covered employment may
11 not receive any credited service for any prior withdrawn
12 accumulated contributions from either this plan or the Public
13 Employees Retirement System unless following his or her
14 return to covered employment and active participation in this
15 plan, the member redeposits in the fund the amount of the
16 accumulated contributions withdrawn from previous covered
17 employment, together with interest on the accumulated
18 contributions at the rate determined by the board from the
19 date of withdrawal to the date of redeposit. Upon repayment
20 he or she shall receive the same credit on account of his or
21 her former covered employment as if no refund had been
22 made.

23 The repayment authorized by this subsection shall be
24 made in a lump sum within sixty months of the emergency
25 medical services officer's reemployment in covered
26 employment or, if later, within sixty months of the effective
27 date of this article.

28 (c) A member of this plan who has elected to transfer
29 from the Public Employees Retirement System into this plan
30 pursuant to subsection (b), section six of this article may not,

31 after having transferred into and become an active member of
32 this plan, reinstate to his or her credit in this plan any service
33 credit relating to periods of nonemergency medical services
34 officer service withdrawn from the Public Employees
35 Retirement System prior to his or her elective transfer into
36 this plan.

37 (d) Every member who completes sixty months of
38 covered employment is eligible, upon cessation of covered
39 employment, to either withdraw his or her accumulated
40 contributions in accordance with this section or to choose not
41 to withdraw his or her accumulated contribution and to
42 receive retirement income payments upon attaining early or
43 normal retirement age.

44 (e) Notwithstanding any other provision of this article,
45 forfeitures under the plan may not be applied to increase the
46 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 full 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 this article.

**§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 dependent 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: *Provided, however*, That
18 if there is no surviving spouse, dependent child or dependent

19 parent of the deceased member, the accumulated
20 contributions shall be paid to a named beneficiary or
21 beneficiaries: *Provided further*, That if there is no surviving
22 spouse, dependent child or dependent parent of the deceased
23 member, or any named beneficiary or beneficiaries, then the
24 accumulated contributions shall be paid to the estate of the
25 deceased member.

26 (c) Any person qualifying as a dependent child under this
27 section, in addition to any other benefits due under this or
28 other sections of this article, is entitled to receive a
29 scholarship to be applied to the career development education
30 of that person. This sum, up to but not exceeding six
31 thousand dollars per year, shall be paid from the fund to any
32 university or college in this state or to any trade or vocational
33 school or other entity in this State approved by the board to
34 offset the expenses of tuition, room and board, books, fees or
35 other costs incurred in a course of study at any of these
36 institutions so long as the recipient makes application to the
37 board on an approved form and under rules provided by the
38 board and maintains scholastic eligibility as defined by the
39 institution or the board. The board may propose legislative
40 rules for promulgation in accordance with article three,
41 chapter twenty-nine-a of this code which define age
42 requirements, physical and mental requirements, scholastic
43 eligibility, disbursement methods, institutional qualifications
44 and other requirements as necessary and not inconsistent with
45 this section.

**§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 emergency medical services officers who
6 retire due to a duty disability pursuant to this article may
7 begin receiving the benefits at the rate and in the amount
8 specified in this article from this fund after the thirtieth day
9 of June, two thousand eight: *Provided further,* That until the
10 thirtieth day of June, two thousand eight, those emergency
11 medical services officers who retire due to a duty disability
12 pursuant to this article may draw benefits from this fund at
13 the rate and in the amount set forth in section twenty-five,
14 article ten, chapter five of this code.

15 (b) During the thirty-six month period before the payout
16 of benefits begins, the Joint Committee on Government and
17 Finance shall cause an interim study or studies to be
18 conducted on the potential effects of the implementation of
19 this retirement system, including, but not limited to, potential
20 funding mechanisms to provide health insurance coverage for
21 retirees in the fifty to fifty-five age group: *Provided,* That
22 after the effective date of this provision, the Director of the
23 Public Employees Insurance Agency shall propose a rule for
24 legislative approval in accordance with the provisions of
25 article three, chapter twenty-nine-a of this code governing the
26 funding of health insurance coverage for retirees under the
27 plan provided in this article who are in the fifty to fifty-five
28 year age group, which rule may be filed as an emergency
29 rule: *Provided, however,* That any rule filed as an emergency
30 rule pursuant to this subsection shall be refiled at the earliest
31 opportunity as a legislative rule for review and promulgation
32 in accordance with the provisions of article three, chapter
33 twenty-nine-a of this code.

CHAPTER 191

**(Com. Sub. for H.B. 4304 - By Delegates Pino, Guthrie, Blair
and Walters)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7, §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto nine new sections, designated §16-19-15, §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and §16-19-23, all establishing the Revised Anatomical Gift Act; providing for a short title; establishing applicability; defining terms; identifying who may make an anatomical gift before the donor's death; establishing the manner of making an anatomical gift before the donor's death; providing for amendment or revocation of an anatomical gift before the donor's death; clarifying donor right to refuse to make an anatomical gift and the effect of such refusal; specifying the preclusive effect of an anatomical gift, amendment or revocation; identifying who may make an anatomical gift of a body or part after death of the donor; establishing the manner of making, amending or revoking an anatomical gift after the decedent's death; identifying persons and institutions to whom anatomical gifts may be made; establishing presumptions for distribution of body and parts if donor does not specify to whom gift passes; requiring first responders, hospital staff and medical examiners to conduct a reasonable search of the body of a decedent for evidence of an anatomical gift or refusal to make a gift; specifying that delivery of document of gift during donor's lifetime not

required; identifying who may examine a document of gift; establishing rights and duties of procurement organization in recovering a body or part the subject of an anatomical gift; requiring hospitals to cooperate with procurement organizations for purposes of recovering anatomical gifts; creating the offense of knowingly buying or selling a body part for transplantation or therapy; creating the offense of intentionally falsifying, concealing, defacing or obliterating a document of gift, amendment or revocation; establishing immunity from civil liability for good faith efforts to comply with article; specifying which law governs documents of gift; establishing donor registry through Division of Motor Vehicles and standards of operation; specifying effect of anatomical gift on advance health care directives; requiring cooperation between medical examiner and procurement organization; establishing standards and conditions for medical examiner's release of body or part subject to anatomical gift to procurement organizations; requiring authorization of prosecuting attorney for release of body or recovery of part where death is subject to criminal investigation; and establishing relation to Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

That §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7, §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said article be amended by adding thereto nine new sections, designated §16-19-15, §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and §16-19-23, all to read as follows:

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-1. Short title.

§16-19-2. Applicability.

- §16-19-3. Definitions.
- §16-19-4. Who may make anatomical gift before donor's death.
- §16-19-5. Manner of making anatomical gift before donor's death.
- §16-19-6. Amending or revoking anatomical gift before donor's death.
- §16-19-7. Refusal to make anatomical gift; effect of refusal.
- §16-19-8. Preclusive effect of anatomical gift, amendment, or revocation.
- §16-19-9. Who may make anatomical gift of decedent's body or part.
- §16-19-10. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
- §16-19-11. Person who may receive anatomical gift; purpose of anatomical gift.
- §16-19-12. Search and notification.
- §16-19-13. Delivery of document of gift not required; right to examine.
- §16-19-14. Rights and duties of procurement organization and others.
- §16-19-15. Coordination of procurement and use.
- §16-19-16. Prohibited acts; sale or purchase of parts prohibited.
- §16-19-17. Immunity.
- §16-19-18. Law governing validity; choice of law as to execution of document of gift; presumption of validity.
- §16-19-19. Donor registry.
- §16-19-20. Effect of anatomical gift on advance health-care directive.
- §16-19-21. Cooperation between medical examiner and procurement organization.
- §16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.
- §16-19-23. Relation to Electronic Signatures in Global and National Commerce Act.

§16-19-1. Short title.

- 1 This article may be cited as the "Revised Anatomical Gift
- 2 Act."

§16-19-2. Applicability.

- 1 This article applies to an anatomical gift or to an
- 2 amendment to, revocation of or refusal to make an
- 3 anatomical gift, whenever made.

§16-19-3. Definitions.

- 1 As used in this article:
- 2 (1) "Adult" means an individual who is at least eighteen
- 3 (18) years of age.
- 4 (2) "Agent" means an individual:

5 (A) Authorized by a medical power of attorney to make
6 health care decisions on behalf of a prospective donor; or

7 (B) Expressly authorized by any other record signed by
8 the donor to make an anatomical gift on his or her behalf.

9 (3) “Anatomical gift” means a donation of all or part of
10 a human body, to take effect after the donor’s death, for the
11 purpose of transplantation, therapy, research or education.

12 (4) “Authorized person” means a person other than the
13 donor who is authorized to make an anatomical gift of the
14 donor’s body or part by section four or section nine of this
15 article.

16 (5) “Certification of death” means a written
17 pronouncement of death by an attending physician.
18 Certification is required before an attending physician can
19 allow removal of any part from the decedent’s body for
20 transplant purposes.

21 (6) “Decedent” means a deceased individual whose body
22 is or may be the source of an anatomical gift. The term
23 “decedent” includes a stillborn infant and, subject to
24 restrictions imposed by law other than this article, a fetus.

25 (7) “Disinterested witness” means a witness other than
26 the spouse, child, parent, sibling, grandchild, grandparent or
27 guardian of or another adult who exhibited special care and
28 concern for an individual who has made, amended, revoked
29 or refused to make an anatomical gift. The term
30 “disinterested witness” does not include a person to whom an
31 anatomical gift may pass pursuant to section eleven of this
32 article.

33 (8) “Document of gift” means a donor card or other
34 record used to make an anatomical gift. The term includes a

35 statement or symbol on a driver's license, identification card
36 or donor registry.

37 (9) "Donor" means an individual whose body or part is
38 the subject of an anatomical gift.

39 (10) "Donor registry" means a database that contains
40 records of anatomical gifts and amendments to or revocations
41 of anatomical gifts.

42 (11) "Driver's license" means a license or permit issued
43 by the Division of Motor Vehicles to operate a vehicle.

44 (12) "Eye bank" means a person licensed, accredited, or
45 regulated under federal or state law to engage in the recovery,
46 screening, testing, processing, storage or distribution of
47 human eyes or portions of human eyes.

48 (13) "Guardian" means a person appointed by a court to
49 make decisions regarding the support, care, education, health
50 or welfare of an individual. The term "guardian" does not
51 include a guardian ad litem.

52 (14) "Hospital" means a facility licensed as a hospital
53 under the law of any state or a facility operated as a hospital
54 by the United States, a state or a subdivision of a state.

55 (15) "Identification card" means an identification card
56 issued by the Division of Motor Vehicles pursuant to section
57 one, article two, chapter seventeen-b of this code.

58 (16) "Know" means to have actual knowledge. It does
59 not include constructive notice and other forms of imputed
60 knowledge.

61 (17) "Medical examiner" means an individual appointed
62 pursuant to article twelve, chapter sixty-one of this code to
63 perform death investigations and to establish the cause and

64 manner of death. The term “medical examiner” includes any
65 person designated by the medical examiner to perform any
66 duties required by this article.

67 (18) “Minor” means an individual who is under eighteen
68 (18) years of age.

69 (19) “Organ procurement organization” means a
70 nonprofit entity designated by the Secretary of the United
71 States Department of Health and Human Services as an organ
72 procurement organization pursuant to 42 U.S.C. §273(b).

73 (20) “Parent” means another person's natural or adoptive
74 mother or father whose parental rights have not been
75 terminated by a court of law.

76 (21) “Part” means an organ, an eye or tissue of a human
77 being. The term does not include the whole body.

78 (22) “Person” means an individual, corporation, business
79 trust, estate, trust, partnership, limited liability company,
80 association, joint venture, public corporation, government or
81 governmental subdivision, agency, or instrumentality, or any
82 other legal or commercial entity.

83 (23) “Physician” means an individual authorized to
84 practice medicine or osteopathy under the law of any state.

85 (24) “Physician assistant” has the meaning provided in
86 section sixteen, article three, chapter thirty of this code.

87 (25) “Procurement organization” means an eye bank,
88 organ procurement organization or tissue bank.

89 (26) “Prospective donor” means an individual who is
90 dead or near death and has been determined by a procurement
91 organization to have a part that could be medically suitable

92 for transplantation, therapy, research or education. The term
93 “prospective donor” does not include an individual who has
94 made a refusal.

95 (27) “Reasonably available” means able to be contacted
96 by a procurement organization without undue effort and
97 willing and able to act in a timely manner consistent with
98 existing medical criteria necessary for the making of an
99 anatomical gift.

100 (28) “Recipient” means an individual into whose body a
101 decedent’s part has been or is intended to be transplanted.

102 (29) “Record” means information that is inscribed on a
103 tangible medium or that is stored in an electronic or other
104 medium and is retrievable in perceivable form.

105 (30) “Revocation” means the affirmative declaration of
106 the potential donor’s withdrawal of their decision to make or
107 not make a document of gift. It does not have the same
108 meaning as a refusal but only establishes that the potential
109 donor chooses not to make an affirmative declaration of their
110 wishes.

111 (31) “Refusal” means a record created under section
112 seven of this article that expressly states an individual’s
113 intent to bar other persons from making an anatomical gift of
114 his or her body or part.

115 (32) “Sign” means to execute or adopt a tangible symbol
116 or attach to or logically associate with the record an
117 electronic symbol, sound or process, with the present intent
118 to authenticate or adopt a record.

119 (33) “State” means a state of the United States, the
120 District of Columbia, Puerto Rico, the United States Virgin
121 Islands, or any territory or insular possession subject to the
122 jurisdiction of the United States.

123 (34) “Surrogate” means an individual eighteen years of
124 age or older who is reasonably available, is willing to make
125 health care decisions on behalf of an incapacitated person,
126 possesses the capacity to make health care decisions and is
127 identified or selected by the attending physician or advanced
128 nurse practitioner in accordance with the provisions of article
129 thirty of this chapter as the person who is to make those
130 decisions in accordance with the provisions of this article.

131 (35) “Technician” means an individual qualified to
132 remove or process parts by an organization that is licensed,
133 accredited or regulated under federal or state law. The term
134 “technician” includes an enucleator, *i.e.*, an individual who
135 removes or processes eyes or parts of eyes.

136 (36) “Tissue” means a portion of the human body other
137 than an organ or an eye. The term “tissue” does not include
138 blood unless the blood is donated for the purpose of research
139 or education.

140 (37) “Tissue bank” means a person that is licensed,
141 accredited or regulated under federal or state law to engage
142 in the recovery, screening, testing, processing, storage or
143 distribution of tissue.

144 (38) “Transplant hospital” means a hospital that furnishes
145 organ transplants and other medical and surgical specialty
146 services required for the care of transplant patients.

§16-19-4. Who may make anatomical gift before donor’s death.

1 Subject to section eight of this article, an anatomical gift
2 may be made during the life of the donor for the purpose of
3 transplantation, therapy, research or education by:

4 (1) The donor, if the donor is an adult;

5 (2) The donor, if the donor is a minor and is emancipated
6 or sixteen (16) years of age or older;

7 (3) An agent of the donor, unless the medical power of
8 attorney or other record prohibits the agent from making an
9 anatomical gift;

10 (4) A parent of the donor, if the donor is an
11 unemancipated minor; or

12 (5) The donor's guardian.

§16-19-5. Manner of making anatomical gift before donor's death.

1 (a) A donor may make an anatomical gift:

2 (1) By authorizing a statement or symbol to be imprinted
3 on his or her driver's license or identification card indicating
4 that he or she has made an anatomical gift;

5 (2) In a will;

6 (3) During a terminal illness or injury, by any form of
7 communication addressed to at least two adults, at least one
8 of whom is a disinterested witness; or

9 (4) As provided in subsection (b) of this section.

10 (b) (1) A donor or a person authorized by section four of
11 this article may make a gift by:

12 (A) A donor card or other record signed by the donor or
13 the authorized person; or

14 (B) Authorizing a statement or symbol indicating that the
15 donor has made an anatomical gift to be included on a donor
16 registry.

17 (2) If the donor or the authorized person is physically
18 unable to sign a record, another individual may sign at the
19 direction of the donor or the authorized person if the
20 document of gift:

21 (A) Is witnessed and signed by at least two adults, at least
22 one of whom is a disinterested witness; and

23 (B) Contains a statement that it has been signed and
24 witnessed as required by paragraph (A) of this subdivision.

25 (c) Revocation, suspension, expiration or cancellation of
26 a driver's license or identification card upon which an
27 anatomical gift is indicated does not invalidate the gift.

28 (d) An anatomical gift made by will takes effect upon the
29 donor's death regardless of whether the will is probated.
30 Invalidation of the will after the donor's death does not
31 invalidate the gift.

§16-19-6. Amending or revoking anatomical gift before donor's death.

1 (a) Subject to section eight of this article, a donor or a
2 person authorized pursuant to section four of this article may
3 amend or revoke an anatomical gift by:

4 (1) (A) A record signed and dated by the donor or the
5 authorized person.

6 (B) If the donor or the authorized person is physically
7 unable to sign a record, another individual may sign at the
8 direction of the donor or the authorized person if the
9 document of gift:

10 (i) Is witnessed and signed by at least two adults, at least
11 one of whom is a disinterested witness; and

12 (ii) Contains a statement that it has been signed and
13 witnessed as required by subparagraph (i) of this paragraph;
14 or

15 (2) A later-executed document of gift that amends or
16 revokes a previous anatomical gift, or portion of an
17 anatomical gift, either expressly or by inconsistency.

18 (b) Subject to section eight of this article, a donor or a
19 person authorized by section four of this article may revoke
20 an anatomical gift by destroying or cancelling the document
21 of gift, or the relevant portion of the document of gift, with
22 the intent to revoke the gift.

23 (c) During a terminal illness or injury, a donor may
24 amend or revoke an anatomical gift that was not made in a
25 will by any form of communication addressed to at least two
26 adults, at least one of whom is a disinterested witness.

27 (d) A donor who makes an anatomical gift in a will may
28 amend or revoke the gift in the manner provided for
29 amendment or revocation of wills or as provided in
30 subsection (a) of this section.

§16-19-7. Refusal to make anatomical gift; effect of refusal.

1 (a) An individual may express his or her refusal to make
2 an anatomical gift of his or her body or body parts by:

3 (1) A record signed by the individual. If the individual is
4 physically unable to sign, another person acting at the
5 direction of the individual may sign if the refusal:

6 (A) Is witnessed and signed by at least two adults, at least
7 one of whom is a disinterested witness, at the request of the
8 individual; and

9 (B) Contains a statement that it has been signed and
10 witnessed as provided in paragraph (A) of this subdivision;

11 (2) The individual's will, regardless of whether the will
12 is admitted to probate or invalidated after the individual's
13 death; or

14 (3) During a terminal illness or injury of the individual,
15 any form of communication made by the individual
16 addressed to at least two adults, at least one of whom is a
17 disinterested witness.

18 (b) An individual who has made a refusal may amend or
19 revoke the refusal:

20 (1) In the manner provided in subsection (a) of this
21 section for making a refusal;

22 (2) By subsequently making an anatomical gift pursuant
23 to section five of this article that is inconsistent with the
24 refusal; or

25 (3) By destroying or canceling the record evidencing the
26 refusal, or the portion of the record used to make the refusal,
27 with the intent to revoke the refusal.

28 (c) Except as otherwise provided in section eight of this
29 article, in the absence of an express, contrary indication set
30 forth in the refusal, an individual's unrevoked refusal to make
31 an anatomical gift of his or her body or part bars all other
32 persons from making an anatomical gift of the individual's
33 body or part.

**§16-19-8. Preclusive effect of anatomical gift, amendment, or
revocation.**

1 (a) Except as otherwise provided in subsections (g) and
2 (f) of this section, in the absence of an express, contrary

3 indication by the donor who has made or amended an
4 anatomical gift, a person other than the donor is barred from
5 making, amending or revoking an anatomical gift of the
6 donor's body or part.

7 (b) If an authorized person makes an unrevoked
8 anatomical gift or an amendment to an anatomical gift of the
9 donor's body or part, no other person may make, amend or
10 revoke the anatomical gift after the donor's death.

11 (c) A revocation of an anatomical gift by the donor or by
12 another individual who is authorized to act on behalf of the
13 donor under any section of this Act, is not a refusal.
14 Following the revocation, the donor, or any person authorized
15 by any section of this act to act on behalf of the donor before
16 the donor's death, or any person authorized to act on behalf
17 of the decedent after the decedent's death, may subsequently
18 make an anatomical gift of the body or part thereof.

19 (d) In the absence of an express, contrary indication by
20 the donor or the person authorized to make an anatomical gift
21 under section four of this article, an anatomical gift of a part
22 is neither a refusal to give another part nor a limitation on the
23 making of an anatomical gift of another part at a later time by
24 the donor or another person.

25 (e) In the absence of an express, contrary indication by
26 the donor or other person authorized to make an anatomical
27 gift under section four of this article, an anatomical gift of a
28 part for one purpose is not a limitation on the making of an
29 anatomical gift of the part for any of the other purposes by
30 the donor or any other person under section five or section
31 ten of this article.

32 (f) If a donor who is an unemancipated minor dies, a
33 parent of the donor who is reasonably available may revoke
34 or amend an anatomical gift of the donor's body or part.

§16-19-9. Who may make anatomical gift of decedent's body or part.

1 (a) Unless barred by section seven or section eight of this
2 article, an anatomical gift of a decedent's body or part for
3 purpose of transplantation, therapy, research or education
4 may be made by any member of the following classes of
5 persons who is reasonably available, in the order of priority
6 listed:

7 (1) A person holding a medical power of attorney or
8 another agent of the decedent at the time of death who could
9 have made an anatomical gift under section four of this
10 article immediately before the decedent's death;

11 (2) The spouse of the decedent, unless in the six (6)
12 months prior to the decedent's death the spouse has lived
13 separate and apart from the decedent in a separate place of
14 abode without cohabitation;

15 (3) Adult children of the decedent;

16 (4) The person acting as the guardian of the decedent at
17 the time of death;

18 (5) An appointed health care surrogate;

19 (6) Parents of the decedent;

20 (7) Adult siblings of the decedent;

21 (8) Adult grandchildren of the decedent;

22 (9) Grandparents of the decedent; or

23 (10) An adult who exhibited special care and concern for
24 the decedent.

25 (b) If there is more than one member of a class entitled to
26 make an anatomical gift, any member of the class may make
27 the anatomical gift unless he or she or a person to whom the
28 anatomical gift may pass pursuant to section eleven of this
29 section knows of an objection by another member of the
30 class. If an objection is known, the majority of the members
31 of the same class must be opposed to the donation in order
32 for the donation to be revoked. In the event of a tie vote, the
33 attending physician or advanced nurse practitioner shall
34 appoint a health care surrogate to decide whether to make an
35 anatomical gift of the decedent's body or part for the purpose
36 of transplantation, therapy, research or education.

37 (c) A person may not make an anatomical gift if, at the
38 time of the decedent's death, a person in a prior class is
39 reasonably available to make or to object to the making of an
40 anatomical gift.

**§16-19-10. Manner of making, amending, or revoking
anatomical gift of decedent's body or part.**

1 (a) A person authorized to make an anatomical gift under
2 section nine of this article may do so by:

3 (1) A document of gift signed by the authorized person;
4 or

5 (2) An oral communication by the authorized person that
6 is electronically recorded or is contemporaneously reduced
7 to a record and signed by the person receiving the oral
8 communication.

9 (b) An anatomical gift by a person authorized by section
10 nine of this article may be amended or revoked orally or in
11 writing by any member of a prior class who is reasonably
12 available. If more than one member of the prior class is
13 reasonably available, the gift made by the authorized person
14 may be revoked only if a majority of the members of the

15 same class are opposed to the anatomical gift. In the event of
16 a tie vote, a health care surrogate shall be appointed to decide
17 whether to honor, amend or revoke the anatomical gift of the
18 decedent's body or part.

19 (c) A revocation under subsection (b) of this section is
20 effective only if, before an incision has been made to remove
21 a part from the donor's body or before invasive procedures
22 have begun to prepare the recipient, the procurement
23 organization, transplant hospital or physician or technician
24 knows of the revocation.

§16-19-11. Persons who may receive anatomical gift; purpose of anatomical gift.

1 (a) An anatomical gift may be made to the following
2 persons named in the document of gift:

3 (1) A hospital; accredited medical school, dental school,
4 college, or university; organ procurement organization; or
5 other appropriate person, for research or education;

6 (2) An individual designated by the person making the
7 anatomical gift as the recipient of the part; or

8 (3) An eye bank or tissue bank.

9 (b) If an anatomical gift is made to an individual under
10 subdivision (2), subsection (a) of this section and the donated
11 body part cannot be transplanted into the named individual,
12 in the absence of an express, contrary indication by the
13 person making the anatomical gift, the part passes pursuant
14 to subsection (g) of this section;

15 (c) If a document of gift makes an anatomical gift and
16 identifies the purpose for which the gift may be used but does
17 not designate a person described in subsection (a) of this
18 section to receive the gift, the following rules apply:

19 (1) If the part is an eye and the gift is for the purpose of
20 transplantation or therapy, the gift passes to the appropriate
21 eye bank.

22 (2) If the part is tissue and the gift is for the purpose of
23 transplantation or therapy, the gift passes to the appropriate
24 tissue bank.

25 (3) If the part is an organ and the gift is for the purpose of
26 transplantation or therapy, the gift passes to the appropriate
27 organ procurement organization as custodian of the organ.

28 (4) If the part is an organ, an eye, or tissue and the gift is
29 for the purpose of research or education, the gift passes to the
30 appropriate procurement organization.

31 (d) If the document of gift states more than one purpose
32 of an anatomical gift but does not specify the priority, the gift
33 must be used for transplantation or therapy, if suitable. If the
34 gift cannot be used for transplantation or therapy, the gift
35 may be used for research or education.

36 (e) If the document of gift does not identify the purpose
37 of the anatomical gift, the gift may be used only for
38 transplantation or therapy and passes in accordance with
39 subsection (g) of this section.

40 (f) If a document of gift specifies only a general intent to
41 make an anatomical gift by using words such as “donor”,
42 “organ donor”, or “body donor”, or by a symbol or statement
43 of similar import, the gift may be used for transplantation,
44 research or therapy and passes in accordance with subsection
45 (g) of this section.

46 (g) For purposes of subsections (b), (e), and (f) of this
47 section, and anatomical gift passes in the following manner:

48 (1) If the part is an eye, the gift passes to the appropriate
49 eye bank.

50 (2) If the part is tissue, the gift passes to the appropriate
51 tissue bank.

52 (3) If the part is an organ, the gift passes to the
53 appropriate organ procurement organization as custodian of
54 the organ.

55 (h) An anatomical gift of an organ for transplantation or
56 therapy, other than a gift to an individual described in
57 subdivision (2), subsection (a) of this section, passes to an
58 organ procurement organization as custodian of the organ.

59 (i) If an anatomical gift does not pass pursuant to
60 subsections (a) through (h) of this section or the body or part
61 is not used for transplantation, therapy, research, or
62 education, custody of the body or part passes to the person
63 under obligation to dispose of the body or part.

64 (j) A person may not accept an anatomical gift if he or
65 she knows that:

66 (1) The gift was not effectively made pursuant to this
67 article; or

68 (2) The decedent made a refusal under section seven of
69 this article that was not revoked.

70 (k) For purposes of subsection (j), if a person knows that
71 an anatomical gift was made in a document of gift, the person
72 is presumed to know of any amendment or revocation of the
73 gift or any refusal to make an anatomical gift in the same
74 document of gift.

75 (l) Except as provided in subdivision (2), subsection (a)
76 of this section, nothing in this article affects the allocation of
77 organs for transplantation or therapy.

§16-19-12. Search and notification.

1 (a) A law-enforcement officer, firefighter, paramedic or
2 other emergency rescuer finding an individual he or she
3 reasonably believes is dead or near death shall as soon as
4 practical make a reasonable search of the individual for a
5 document of gift or other information identifying the
6 individual as a donor or as having made a refusal. If a
7 document of gift or a refusal is located by the search and the
8 individual is taken to a hospital, the person who conducted
9 the search shall send the document of gift or refusal to the
10 hospital.

11 (b) If no other source of the information is immediately
12 available, hospital staff shall search an individual reasonably
13 believed to be dead or near death as soon as practical after the
14 arrival at the hospital for a document of gift or other
15 information identifying the individual as a donor or as having
16 made a refusal.

17 (c) A medical examiner shall conduct a reasonable search
18 of an individual whose body is placed in his or her custody
19 for a document of gift or other information identifying the
20 individual as a donor or as having made a refusal.

21 (d) A person is not subject to criminal or civil liability for
22 failing to discharge the duties imposed by this section but
23 may be subject to administrative sanctions.

§16-19-13. Delivery of document of gift not required; right to examine.

1 (a) A document of gift need not be delivered during the
2 donor's lifetime to be effective.

3 (b) Upon or after an individual's death, a person in
4 possession of a document of gift or a refusal with respect to
5 the decedent shall allow: (1) A person authorized to make or
6 object to the making of an anatomical gift with respect to the
7 decedent; or (2) a person to whom the gift could pass under
8 section eleven of this article to examine and copy the
9 document of gift or refusal.

§16-19-14. Rights and duties of procurement organization and others.

1 (a) When a hospital refers an individual at or near death
2 to a procurement organization, the organization shall make a
3 reasonable search of the records of the Division of Motor
4 Vehicles and any donor registry it knows of for the
5 geographical area in which the individual resides to ascertain
6 whether the individual has made an anatomical gift.

7 (b) The Division of Motor Vehicles shall allow a
8 procurement organization reasonable access to information
9 in the division's records to ascertain whether an individual at
10 or near death is a donor. The Commissioner of the Division
11 of Motor Vehicles shall propose legislative rules for
12 promulgation pursuant to article three, chapter twenty-nine-a
13 of this code to facilitate procurement agencies' access to
14 records pursuant to this subsection.

15 (c) When a hospital refers an individual at or near death
16 to a procurement organization, the organization may conduct
17 any reasonable examination necessary to ensure the medical
18 suitability of a part that is or could be the subject of an
19 anatomical gift for transplantation, therapy, research, or
20 education from a donor or a prospective donor. During the
21 examination period, measures necessary to ensure the
22 medical suitability of the part may not be withdrawn unless
23 the hospital or procurement organization knows that the
24 prospective donor expressed a contrary intent.

25 (d) Unless prohibited by law, at any time after a donor's
26 death, a person to whom a decedent's part passes under
27 section eleven of this article may conduct any reasonable
28 examination necessary to ensure the medical suitability of the
29 body or part for its intended purpose.

30 (e) Unless prohibited by law, an examination under
31 subsection (c) or (d) of this section may include an
32 examination of all medical and dental records of the donor or
33 prospective donor.

34 (f) Upon the death of a minor who was a donor or had
35 signed a refusal, unless a procurement organization knows
36 the minor is emancipated, the procurement organization shall
37 conduct a reasonable search for the parents of the minor and
38 provide the parents with an opportunity to revoke or amend
39 the anatomical gift or revoke the refusal.

40 (g) Upon referral by a hospital under subsection (a) of
41 this section, a procurement organization shall make a
42 reasonable search for any person listed in section nine of this
43 article having priority to make an anatomical gift on behalf
44 of a prospective donor. If a procurement organization
45 receives information that an anatomical gift to any other
46 person was made, amended or revoked, it shall promptly
47 advise the other person of all relevant information.

48 (h) Except as provided in and section twenty-two of this
49 article, the rights of the person to whom a part passes under
50 section eleven of this article are superior to the rights of all
51 others. A person may accept or reject an anatomical gift, in
52 whole or in part. Subject to the terms of the document of gift
53 and this article, a person that accepts an anatomical gift of an
54 entire body may allow embalming, burial or cremation, and
55 use of remains in a funeral service. If the gift is of a part, the
56 person to whom the part passes under section eleven of this
57 article shall, upon the death of the donor and before

58 embalming, burial or cremation, cause the part to be removed
59 without unnecessary mutilation.

60 (i) Neither the physician or the physician assistant who
61 attends the decedent at death nor the physician or the
62 physician assistant who determines the time of death may
63 participate in the procedures for removing or transplanting a
64 part from the decedent.

65 (j) A physician or technician may remove a donated part
66 from the body of a donor that the physician or technician is
67 qualified to remove.

§16-19-15. Coordination of procurement and use.

1 Each hospital licensed in this state shall enter into
2 agreements or affiliations with procurement organizations for
3 coordinating procurement and use of anatomical gifts.

§16-19-16. Prohibited acts; sale or purchase of parts prohibited.

1 (a) Except as provided in subsection (b) of this section,
2 a person who knowingly buys or sells, for valuable
3 consideration, a part for transplantation or therapy is guilty of
4 a felony, and upon conviction thereof, shall be fined not more
5 than fifty thousand dollars (\$50,000) or imprisoned in a state
6 correctional facility for a term of not more than five years, or
7 both fined and imprisoned.

8 (b) A person who, in order to obtain a financial gain,
9 intentionally falsifies, forges, conceals, defaces or obliterates
10 a document of gift, an amendment or revocation of a
11 document of gift or a refusal is guilty of a felony, and upon
12 conviction thereof, shall be fined not more than fifty
13 thousand dollars (\$50,000) or imprisoned in a state
14 correctional facility for a term of not more than five years.

15 (c) Nothing in this section prohibits a person from
16 charging reasonable amounts for the costs of removing,
17 processing, preserving, quality control, storing, transporting,
18 implanting or disposing of a part.

§16-19-17. Immunity.

1 (a) A person, including a medical examiner, who acts in
2 accordance with this article or with the applicable anatomical
3 gift law of another state, or attempts in good faith to do so, is
4 not liable for the act in a civil action, criminal prosecution or
5 administrative proceeding.

6 (b) Neither the person making an anatomical gift nor the
7 donor's estate is liable for any injury or damage that results
8 from the making or use of the gift.

9 (c) In determining whether an anatomical gift has been
10 made, amended or revoked under this article, a person to
11 whom a gift passes may rely upon an individual's
12 representations that he or she is the donor or a person
13 authorized to make a gift of the body or part pursuant to
14 subsection (a), section nine of this article, unless the person
15 to whom the gift may pass knows that the representation is
16 untrue.

**§16-19-18. Law governing validity; choice of law as to execution
of document of gift; presumption of validity.**

1 (a) A document of gift is valid if executed in accordance
2 with:

3 (1) This article;

4 (2) The laws of the state or country where it was
5 executed; or

6 (3) The laws of the state or country where the person
7 making the anatomical gift was domiciled, has a place of
8 residence, or was a national at the time the document of gift
9 was executed.

10 (b) If a document of gift is valid under this section, the
11 law of this state governs the interpretation of the document of
12 gift.

13 (c) A person may presume that a document of gift or
14 amendment of an anatomical gift is valid unless that person
15 knows that it was not validly executed or was revoked.

§16-19-19. Donor registry.

1 (a) The Division of Motor Vehicles may establish or
2 contract for the establishment of a donor registry.

3 (b) The Division of Motor Vehicles shall cooperate with
4 a person that administers any donor registry established or
5 contracted for pursuant to this section or recognized for the
6 purpose of transferring to the donor registry all relevant
7 information regarding a donor's making, amendment to, or
8 revocation of an anatomical gift.

9 (c) A donor registry must:

10 (1) Allow a donor or person authorized under section four
11 of this article to include on the donor registry a statement or
12 symbol that the donor has made, amended or revoked an
13 anatomical gift;

14 (2) Be accessible to a procurement organization to allow
15 it to obtain relevant information on the donor registry to
16 determine, at or near death of the donor or a prospective
17 donor, whether the donor or prospective donor has made,
18 amended or revoked an anatomical gift; and

19 (3) Be accessible for purposes of paragraphs (1) and (2)
20 of this subsection twenty-four hours a day, seven days a
21 week.

22 (d) Personally identifiable information on a donor
23 registry about a donor or prospective donor may not be used
24 or disclosed without the express consent of the donor,
25 prospective donor or person that made the anatomical gift for
26 any purpose other than to determine, at or near death of the
27 donor or prospective donor, whether the donor or prospective
28 donor has made, amended or revoked an anatomical gift.

29 (e) This section does not prohibit any person from
30 creating or maintaining a donor registry that is not
31 established by or under contract with the state. Any private
32 donor registry must comply with subsections (c) and (d) of
33 this section.

**§16-19-20. Effect of anatomical gift on advance health-care
directive.**

1 (a) In this section:

2 (1) “Advance health-care directive” means a medical
3 power of attorney or a record signed or authorized by a
4 prospective donor containing the prospective donor’s
5 direction concerning a health-care decision for the
6 prospective donor.

7 (2) “Declaration” means a record signed by a prospective
8 donor specifying the circumstances under which a life
9 support system may be withheld or withdrawn from the
10 prospective donor.

11 (3) “Health-care decision” means any decision regarding
12 the health care of the prospective donor.

13 (b) If a prospective donor has a declaration or advance
14 health care directive, the terms of which are in conflict with
15 the express or implied terms of a potential anatomical gift
16 with regard to administration of measures necessary to ensure
17 the medical suitability of a part for transplantation or therapy,
18 the attending physician and the prospective donor shall
19 confer to resolve the conflict.

20 (1) If the prospective donor is incapable of resolving the
21 conflict, an agent acting under the prospective donor's
22 declaration or directive, or, if none or the agent is not
23 reasonably available, another person authorized by law other
24 than this article to make health-care decisions on behalf of
25 the prospective donor, shall act for the donor to resolve the
26 conflict as quickly as possible.

27 (2) A procurement organization and any person
28 authorized to make an anatomical gift on behalf of a
29 prospective donor pursuant to section nine of this article shall
30 provide any information relevant to the resolution of the
31 conflict.

32 (3) Pending resolution of the conflict, measures necessary
33 to ensure the medical suitability of a part may not be
34 withheld or withdrawn from the prospective donor unless
35 doing so is contraindicated by appropriate end-of-life care.

**§16-19-21. Cooperation between medical examiner and
procurement organization.**

1 (a) A medical examiner shall cooperate with a
2 procurement organization to maximize the opportunity to
3 recover anatomical gifts for the purpose of transplantation,
4 therapy, research or education.

5 (b) If a medical examiner receives notice from a
6 procurement organization that an anatomical gift was or

7 might have been made with respect to a decedent whose body
8 is in the custody of the medical examiner, the medical
9 examiner shall endeavor to conduct a post-mortem
10 examination in a manner and within a period compatible with
11 its preservation for the purposes of the gift, unless the
12 medical examiner denies recovery in accordance with section
13 twenty-two of this article.

14 (c) While the decedent's body is in the custody of a
15 medical examiner, a part may not be removed for
16 transplantation, therapy, research or education or the body
17 delivered for research and education unless the part or the
18 body is the subject of an anatomical gift. This subsection
19 does not preclude a medical examiner from performing a
20 medicolegal investigation upon the decedent's body or parts
21 while in his or her custody.

**§16-19-22. Facilitation of anatomical gift from decedent whose
body is under jurisdiction of medical examiner.**

1 (a) Except as provided in subsection (e) of this section,
2 the medical examiner shall, upon request of a procurement
3 organization, release to the procurement organization the
4 name, contact information and available medical and social
5 history of a decedent whose body is in the custody of the
6 medical examiner. If the decedent's body or part is
7 medically suitable for transplantation, therapy, research or
8 education, the medical examiner shall release post-mortem
9 examination results after being paid in accordance with the
10 fee schedule established in rules to the procurement
11 organization, subject to subsection (e) of this section. The
12 procurement organization may make a subsequent disclosure
13 of the post-mortem examination results or other information
14 received from the medical examiner only if relevant to
15 transplantation or therapy.

16 (b) The medical examiner may conduct a medicolegal
17 examination by reviewing all medical records, laboratory test

18 results, x-rays, other diagnostic results and other information
19 that any person possesses about a donor or prospective donor
20 whose body is under the jurisdiction of the medical examiner
21 which the medical examiner determines may be relevant to
22 the investigation.

23 (c) A person with any information requested by a
24 medical examiner pursuant to subsection (b) of this section
25 shall provide that information as soon as possible to allow the
26 medical examiner to conduct the medicolegal investigation
27 within a period compatible with the preservation of parts for
28 the purpose of transplantation, therapy, research or education.

29 (d) If the medical examiner determines that a post-
30 mortem examination is not required or that a post-mortem
31 examination is required but that the recovery of the part that
32 is the subject of an anatomical gift will not interfere with the
33 examination, the medical examiner and procurement
34 organization shall cooperate in the timely removal of the part
35 from the decedent for the purpose of transplantation, therapy,
36 research or education.

37 (e) If the decedent's death is the subject of a criminal
38 investigation, the medical examiner may not release the body
39 or part that is the subject of an anatomical gift or the social
40 history, medical history or post-mortem examination results
41 without the express authorization of the prosecuting attorney
42 of the county having jurisdiction over the investigation.

43 (f) If an anatomical gift of a part from the decedent
44 under the jurisdiction of the medical examiner has been or
45 might be made, but the medical examiner initially believes
46 that the recovery of the part could interfere with the post-
47 mortem investigation into the decedent's cause or manner of
48 death, the medical examiner shall consult with the
49 procurement organization about the proposed recovery. After
50 the consultation, the medical examiner may allow the

51 recovery at his or her discretion. The medical examiner may
52 attend the removal procedure for the part before making a
53 final determination not to allow the procurement organization
54 to recover the part.

55 (g) If the medical examiner denies recovery of the part,
56 he or she shall:

57 (1) Provide the procurement organization with a written
58 explanation of the specific reasons for not allowing recovery
59 of the part; and

60 (2) Include in the medical examiner's records the
61 specific reasons for denying recovery of the part.

62 (h) If the medical examiner allows recovery of a part,
63 the procurement organization shall, upon request, cause the
64 physician or technician who removes the part to provide the
65 medical examiner with a written report describing the
66 condition of the part, a biopsy, a photograph or any other
67 information and observations that would assist in the post-
68 mortem examination.

69 (i) A medical examiner who decides to be present at a
70 removal procedure pursuant to subsection (f) of this section
71 is entitled to reimbursement for the expenses associated with
72 appearing at the recovery procedure from the procurement
73 organization which requested his or her presence.

74 (j) A medical examiner performing any of the functions
75 specified in this section shall comply with all applicable
76 provisions of article twelve, chapter sixty-one of this code.

**§16-19-23. Relation to Electronic Signatures in Global and
National Commerce Act.**

1 This act modifies, limits and supersedes the Electronic
2 Signatures in Global and National Commerce Act, 15 U.S.C.

3 §7001 et seq., but does not modify, limit or supersede Section
4 101(a) of that act, 15 U.S.C. Section 7001, or authorize
5 electronic delivery of any of the notices described in Section
6 103(b) of that act, 15 U.S.C. Section 7003(b).



CHAPTER 192

**(H.B. 4406 - By Delegates DeLong, Shaver, Williams,
Rodighiero, Rowan, Eldridge, Sobonya, Sumner, Fragale
and C. Miller)**

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-5d; and to amend and reenact §18-9D-2 and §18-9D-16 of said code, all relating generally to the School Building Authority and to state board standards for the recommended duration of school bus transportation times for students to and from school; modifying definitions and qualifications for construction projects and major improvement projects; limiting county board authority to establish new routes for certain students to certain schools unless certain requirements met; providing for state board to permit new routes in excess of limit up to certain limit; requiring state board to provide certain technical assistance; requiring countywide comprehensive facilities plans required by School Building Authority to address providing facility infrastructure that avoids excessive transportation times; requiring guidelines for update of transportation times in approved facilities plans; prohibiting project approval by authority when transportation route times for certain students exceed limits unless state board permission is granted.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-5d; and that §18-9D-2 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

Article

2E. High Quality Educational Programs.

9D. School Building Authority.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5d. Standards for the duration of school bus transportation times for students to and from school.

1 (a) The high quality standards for transportation adopted
2 by the state board pursuant to section five of this article shall
3 include standards for the recommended duration of the
4 one-way school bus transportation time for students to and
5 from school under normal weather and operating conditions
6 as follows:

7 (1) For elementary school students, thirty minutes;

8 (2) For middle school, intermediate school and junior
9 high school students, forty-five minutes; and

10 (3) For high school students, sixty minutes.

11 (b) A county board may not create a new bus route for the
12 transportation of students in any of the grade levels
13 prekindergarten through grade five to and from any school
14 included in a school closure, consolidation or new
15 construction project approved after the first day of July, two

16 thousand eight, which exceeds by more than fifteen minutes
17 the recommended duration of the one-way school bus
18 transportation time for elementary students adopted by the
19 state board in accordance with subsection (a) of this section
20 unless:

21 (1) The county board adopts a separate motion to approve
22 creation of the route and request written permission of the
23 state board to create the route; and

24 (2) Receives the written permission of the state board to
25 create the route.

26 (c) A county board may not create, nor may the state
27 board permit, the creation of a new bus route for the
28 transportation of students in any of the grade levels
29 prekindergarten through grade five to and from any school
30 included in a school closure, consolidation or new
31 construction project approved after the first day of July, two
32 thousand eight, which exceeds by more than thirty minutes
33 the recommended duration of the one-way school bus
34 transportation time for elementary students adopted by the
35 state board in accordance with subsection (a) of this section.

36 (d) The state board shall provide technical assistance to
37 county boards with the objective of achieving school bus
38 transportation routes for students which are within the
39 recommended time durations established by the state board.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

***§18-9D-2. Definitions.**

1 For the purposes of this article, unless a different
2 meaning 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
6 pursuant to this article;

7 (3) "Construction project" means a project in the
8 furtherance of a facilities plan with a cost greater than one
9 million 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
17 to making the construction project operational.

18 (D) Construction project does not include such items as
19 books, computers or equipment used for instructional
20 purposes; fuel; supplies; routine utility services fees; routine
21 maintenance costs; ordinary course of business
22 improvements; other items which are customarily considered
23 to result in a current or ordinary course of business operating
24 charge or a major improvement project;

*CLERK'S NOTE: This section was also amended by SB 297 (Chapter 79),
which passed prior to this act.

25 (4) "Cost of project" means the cost of construction,
26 expansion, renovation, repair and safety upgrading of
27 facilities, buildings and structures for school purposes; the
28 cost of land, equipment, machinery, furnishings, installation
29 of utilities and other similar items related to making the
30 project operational; and the cost of financing, interest during
31 construction, professional service fees and all other charges
32 or expenses necessary, appurtenant or incidental to the
33 foregoing, including 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
43 general school population and the communities served by the
44 facilities, including, but not limited to, providing for a facility
45 infrastructure that avoids excessive school bus transportation
46 times for students consistent with sound educational policy
47 and within the budgetary constraints for staffing and
48 operating the schools of the county;

49 (C) Includes the school major improvement plan;

50 (D) Includes the county board's school access safety plan
51 required by section three, article nine-f of this chapter;

52 (E) Is updated annually to reflect projects completed,
53 current enrollment projections and new or continuing needs;
54 and

55 (F) Is approved by the state board and the authority prior
56 to the distribution of state funds pursuant to this article to any
57 county board or other entity applying for funds;

58 (6) "Project" means a construction project or a major
59 improvement project;

60 (7) "Region" means the area encompassed within and
61 serviced by a regional educational service agency established
62 pursuant to section twenty-six, article two of this chapter;

63 (8) "Revenue" or "revenues" means moneys:

64 (A) Deposited in the School Building Capital
65 Improvements Fund pursuant to section ten, article nine-a of
66 this chapter;

67 (B) Deposited in the School Construction Fund pursuant
68 to section thirty, article fifteen, chapter eleven of this code
69 and section eighteen, article twenty-two, chapter twenty-nine
70 of this code;

71 (C) Deposited in the School Building Debt Service Fund
72 pursuant to section eighteen, article twenty-two, chapter
73 twenty-nine of this code;

74 (D) Deposited in the School Major Improvement Fund
75 pursuant to section thirty, article fifteen, chapter eleven of
76 this code;

77 (E) Received, directly or indirectly, from any source for
78 use in any project completed pursuant to this article;

79 (F) Received by the authority for the purposes of this
80 article; and

81 (G) Deposited in the Excess Lottery School Building
82 Debt Services Fund pursuant to section eighteen-a, article
83 twenty-two, chapter twenty-nine of this code.

84 (9) "School major improvement plan" means a ten-year
85 school maintenance plan that:

86 (A) Is prepared by a county board in accordance with the
87 guidelines established by the authority and incorporated in its
88 Countywide Comprehensive Educational Facilities Plan, or
89 is prepared by the state board or the administrative council of
90 an area vocational educational center in accordance with the
91 guidelines if the entities seek funding from the authority for
92 a major improvement project;

93 (B) Addresses the regularly scheduled maintenance for
94 all school facilities of the county or under the jurisdiction of
95 the entity seeking funding;

96 (C) Includes a projected repair and replacement schedule
97 for all school facilities of the county or of entity seeking
98 funding;

99 (D) Addresses the major improvement needs of each
100 school within the county or under the jurisdiction of the
101 entity seeking funding; and

102 (E) Is required prior to the distribution of state funds for
103 a major improvement project pursuant to this article to the
104 county board, state board or administrative council; and

105 (10) "School major improvement project" means a project
106 with a cost greater than fifty thousand dollars and less than
107 one million dollars for the renovation, expansion, repair and
108 safety upgrading of existing school facilities, buildings and
109 structures, including the substantial repair or upgrading of
110 equipment, machinery, building systems, utilities and other

111 similar items related to the renovation, repair or upgrading in
112 the furtherance of a school major improvement plan. A
113 major improvement project does not include such items as
114 books, computers or equipment used for instructional
115 purposes; fuel; supplies; routine utility services fees; routine
116 maintenance costs; ordinary course of business
117 improvements; or other items which are customarily
118 considered to result in a current or ordinary course of
119 business operating charge.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

1 (a) The authority shall establish guidelines and
2 procedures to promote the intent and purposes of this article
3 and assure the prudent and resourceful expenditure of state
4 funds for projects under this article including, but not limited
5 to, the following:

6 (1) Guidelines and procedures for the facilities plans,
7 school major improvement plans and projects submitted in
8 the furtherance of the plans that address, but are not limited
9 to, the following:

10 (A) All of the elements of the respective plans as defined
11 in section two of this article;

12 (B) The procedures for a county to submit a preliminary
13 plan, a plan outline or a proposal for a plan to the authority
14 prior to the submission of the facilities plan. The preliminary
15 plan, plan outline or proposal for a plan shall be the basis for
16 a consultation meeting between representatives of the county

17 and members of the authority, including at least one citizen
18 member, which shall be held promptly following submission
19 of the preliminary plan, plan outline or proposal for a plan to
20 assure understanding of the general goals of this article and
21 the objective criteria by which projects will be evaluated, to
22 discuss ways the plan may be structured to meet those goals,
23 and to assure efficiency and productivity in the project
24 approval process;

25 (C) The manner, time line and process for the submission
26 of each plan and annual plan updates to the authority;

27 (D) The requirements for public hearings, comments or
28 other means of providing broad-based input on plans and
29 projects under this article within a reasonable time period as
30 the authority may consider appropriate. The submission of
31 each plan must be accompanied by a synopsis of all
32 comments received and a formal comment by the county
33 board, the state board or the administrative council of an area
34 vocational educational center submitting the plan;

35 (E) Any project specifications and maintenance
36 specifications considered appropriate by the authority
37 including, but not limited to, such matters as energy
38 efficiency, preferred siting, construction materials,
39 maintenance plan and any other matter related to how the
40 project is to proceed;

41 (F) A prioritization by the county board, the state board
42 or the administrative council submitting the plan of each
43 project contained in the plan. In prioritizing the projects, the
44 county board, the state board or the administrative council
45 submitting the plan shall make determinations in accordance
46 with the objective criteria formulated by the School Building
47 Authority in accordance with this section. The priority list is
48 one of the criteria that shall be considered by the authority
49 deciding how the available funds should be expended;

50 (G) The objective means to be set forth in the plan and
51 used in evaluating implementation of the overall plan and
52 each project included in the plan. The evaluation must
53 measure how the plan addresses the goals of this article and
54 any guidelines adopted under this article, and how each
55 project is in furtherance of the facilities plan and school
56 major improvement plan, as applicable, as well as the
57 importance of the project to the overall success of the
58 facilities plan or school major improvement plan and the
59 overall goals of the authority; and

60 (H) Any other matters considered by the authority to be
61 important reflections of how a construction project or a major
62 improvement project or projects will further the overall goals
63 of this article.

64 (2) Guidelines and procedures which may be adopted by
65 the authority for requiring that a county board modify,
66 update, supplement or otherwise submit changes or additions
67 to an approved facilities plan or for requiring that a county
68 board, the state board or the administrative council of an area
69 vocational educational center modify, update, supplement or
70 otherwise submit changes or additions to an approved school
71 major improvement plan. The authority shall provide
72 reasonable notification and sufficient time for the change or
73 addition as delineated in guidelines developed by the
74 authority. The guidelines shall require an update of the
75 estimated duration of school bus transportation times for
76 students associated with any construction project under
77 consideration by the authority that includes the closure,
78 consolidation or construction of a school or schools.

79 (3) Guidelines and procedures for evaluating project
80 proposals that are submitted to the authority that address, but
81 are not limited to, the following:

82 (A) Any project funded by the authority must be in
83 furtherance of the facilities plan or school major

84 improvement plan and in compliance with the guidelines
85 established by the authority;

86 (B) If a project is to benefit more than one county in the
87 region, the facilities plan must state the manner in which the
88 cost and funding of the project will be apportioned among the
89 counties;

90 (C) If a county board proposes to finance a construction
91 project through a lease with an option to purchase pursuant
92 to an investment contract as described in subsection (f),
93 section fifteen of this article, the specifications for the project
94 must include the term of the lease, the amount of each lease
95 payment, including the payment due upon exercise of the
96 option to purchase, and the terms and conditions of the
97 proposed investment contract; and

98 (D) The objective criteria for the evaluation of projects
99 which shall include, but are not limited to, the following:

100 (i) How the current facilities do not meet and how the
101 plan and any project under the plan meets the following:

102 (I) Student health and safety including, but not limited to,
103 critical health and safety needs;

104 (II) Economies of scale, including compatibility with
105 similar schools that have achieved the most economical
106 organization, facility use and pupil-teacher ratios;

107 (III) Reasonable travel time and practical means of
108 addressing other demographic considerations. The authority
109 may not approve a project after the first day of July, two
110 thousand eight, that includes a school closure, consolidation
111 or new construction for which a new bus route will be created
112 for the transportation of students in any of the grade levels
113 prekindergarten through grade five to and from any school

114 included in the project, which new bus route exceeds by more
115 than fifteen minutes the recommended duration of the
116 one-way school bus transportation time for elementary
117 students adopted by the state board as provided in section
118 five-d, article two-e of this chapter, unless the county has
119 received the written permission of the state board to create
120 the route in accordance with said section five-d;

121 (IV) Multicounty and regional planning to achieve the
122 most effective and efficient instructional delivery system;

123 (V) Curriculum improvement and diversification,
124 including the use of instructional technology, distance
125 learning and access to advanced courses in science,
126 mathematics, language arts and social studies;

127 (VI) Innovations in education;

128 (VII) Adequate space for projected student enrollments;

129 (VIII) The history of efforts taken by the county board to
130 propose or adopt local school bond issues or special levies to
131 the extent Constitutionally permissible; and

132 (IX) Regularly scheduled preventive maintenance; and

133 (ii) How the project will assure the prudent and
134 resourceful expenditure of state funds and achieve the
135 purposes of this article for constructing, expanding,
136 renovating or otherwise improving and maintaining school
137 facilities for a thorough and efficient education.

138 (4) Guidelines and procedures for evaluating projects for
139 funding that address, but are not limited to, the following:

140 (A) Requiring each county board's facilities plan and
141 school major improvement plan to prioritize all the

142 construction projects or major improvement projects,
143 respectively, within the county. A school major
144 improvement plan submitted by the state board or the
145 administrative council of an area vocational educational
146 center shall prioritize all the school improvement projects
147 contained in the plan. The priority list shall be one of the
148 criteria to be considered by the authority in determining how
149 available funds shall be expended. In prioritizing the
150 projects, the county board, the state board or the
151 administrative council submitting a plan shall make
152 determinations in accordance with the objective criteria
153 formulated by the School Building Authority;

154 (B) The return to each county submitting a project
155 proposal an explanation of the evaluative factors underlying
156 the decision of the authority to fund or not to fund the
157 project; and

158 (C) The allocation and expenditure of funds in
159 accordance with this article, subject to the availability of
160 funds.

161 (b) Prior to final action on approving projects for funding
162 under this article, the authority shall submit a certified list of
163 the projects to the Joint Committee on Government and
164 Finance.

165 (c) The State Department of Education shall conduct
166 on-site inspections, at least annually, of all facilities which
167 have been funded wholly or in part by moneys from the
168 authority or state board to ensure compliance with the county
169 board's facilities plan and school major improvement plan as
170 related to the facilities; to preserve the physical integrity of
171 the facilities to the extent possible; and to otherwise extend
172 the useful life of the facilities: *Provided*, That the state board
173 shall submit reports regarding its on-site inspections of
174 facilities to the authority within thirty days of completion of

175 the on-site inspections: *Provided, however,* That the state
176 board shall promulgate rules regarding the on-site inspections
177 and matters relating thereto, in consultation with the
178 authority, as soon as practical and shall submit proposed
179 rules for legislative review no later than the first day of
180 December, one thousand nine hundred ninety-four.

181 (d) Based on its on-site inspection or notification by the
182 authority to the state board that the changes or additions to a
183 county's board facilities plan or school major improvement
184 plan required by the authority have not been implemented
185 within the time period prescribed by the authority, the state
186 board shall restrict the use of the necessary funds or
187 otherwise allocate funds from moneys appropriated by the
188 Legislature for those purposes set forth in section nine, article
189 nine-a of this chapter.

CHAPTER 193

**(H.B. 4465 - By Delegates Webster, Stemple, Kessler, Hrutkay,
Guthrie, Sobonya, Longstreth, Varner, Burdiss, Azinger
and Schadler)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §59-1-2 of the Code of West Virginia, 1931, as amended, relating to creating a special revenue account; redirecting certain fees into the account; providing purposes for the expenditure of certain fee collections; continuing the prepaid fees and services account in the Secretary of State's office; assets in account not public funds; and purpose of account.

Be it enacted by the Legislature of West Virginia:

That §59-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

***§59-1-2. Fees to be charged by Secretary of State.**

1 (a) Except as may be otherwise provided in this code, the
2 Secretary of State shall charge for services rendered in his or
3 her office the following fees to be paid by the person to
4 whom the service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation,
7 amendment, change of name, registration of trade name,
8 merger, consolidation, conversion, renewal, dissolution,
9 termination, cancellation, withdrawal revocation and
10 reinstatement of business entities organized within the state,
11 as follows:

12 (A) Articles of incorporation of for-profit corporation
13 \$50.00

14 (B) Articles of incorporation of nonprofit corporation
15 25.00

16 (C) Articles of organization of limited liability company
17 100.00

18 (D) Agreement of a general partnership 50.00

*CLERK’S NOTE: This section was also amended by HB 4421 (Chapter 212), which passed prior to this act.

- 19 (E) Certificate of a limited partnership 100.00
- 20 (F) Agreement of a voluntary association 50.00
- 21 (G) Articles of organization of a business trust . . 50.00
- 22 (H) Amendment or correction of articles of incorporation,
23 including change of name or increase of capital stock, in
24 addition to any applicable license tax 25.00
- 25 (I) Amendment or correction, including change of name,
26 of articles of organization of business trust, limited liability
27 partnership, limited liability company or professional limited
28 liability company or of certificate of limited partnership or
29 agreement of voluntary association 25.00
- 30 (J) Amendment and restatement of articles of
31 incorporation, certificate of limited partnership, agreement of
32 voluntary association or articles of organization of limited
33 liability partnership, limited liability company or professional
34 limited liability company or business trust \$25.00
- 35 (K) Registration of trade name, otherwise designated as
36 a true name, fictitious name or D.B.A. (doing business as)
37 name for any domestic business entity as permitted by law
38 25.00
- 39 (L) Articles of merger of two corporations, limited
40 partnerships, limited liability partnerships, limited liability
41 companies or professional limited liability companies,
42 voluntary associations or business trusts. 25.00
- 43 (M) Plus for each additional party to the merger in excess
44 of two 15.00
- 45 (N) Statement of conversion, when permitted, from one
46 business entity into another business entity, in addition to the

47	cost of filing the appropriate documents to organize the	
48	surviving entity	25.00
49	(O) Articles of dissolution of a corporation, voluntary	
50	association or business trust, or statement of dissolution of a	
51	general partnership	25.00
52	(P) Revocation of voluntary dissolution of a corporation,	
53	voluntary association or business trust	15.00
54	(Q) Articles of termination of a limited liability company,	
55	cancellation of a limited partnership or statement of	
56	withdrawal of limited liability partnership	25.00
57	(R) Reinstatement of a limited liability company or	
58	professional limited liability company after administrative	
59	dissolution	\$25.00
60	(2) For filing, recording, indexing, preserving a record of	
61	and issuing a certificate relating to the registration,	
62	amendment, change of name, merger, consolidation,	
63	conversion, renewal, withdrawal or termination within this	
64	state of business entities organized in other states or	
65	countries, as follows:	
66	(A) Certificate of authority of for-profit corporation	
67	. . . . .	100.00
68	(B) Certificate of authority of nonprofit corporation	
69	. . . . .	50.00
70	(C) Certificate of authority of foreign limited liability	
71	companies	150.00
72	(D) Certificate of exemption from certificate of authority	
73	. . . . .	25.00
74	(E) Registration of a general partnership	50.00

75	(F) Registration of a limited partnership	150.00
76	(G) Registration of a limited liability partnership for	
77	two-year term	500.00
78	(H) Registration of a voluntary association	50.00
79	(I) Registration of a trust or business trust	50.00
80	(J) Amendment or correction of certificate of authority of	
81	a foreign corporation, including change of name or increase	
82	of capital stock, in addition to any applicable license tax	
83	. . . . .	\$25.00
84	(K) Amendment or correction of certificate of limited	
85	partnership, limited liability partnership, limited liability	
86	company or professional limited liability company, voluntary	
87	association or business trust	25.00
88	(L) Registration of trade name, otherwise designated as	
89	a true name, fictitious name or D.B.A. (doing business as)	
90	name for any foreign business entity as permitted by law	
91	. . . . .	25.00
92	(M) Amendment and restatement of certificate of	
93	authority or of registration of a corporation, limited	
94	partnership, limited liability partnership, limited liability	
95	company or professional limited liability company, voluntary	
96	association or business trust	25.00
97	(N) Articles of merger of two corporations, limited	
98	partnerships, limited liability partnerships, limited liability	
99	companies or professional limited liability companies,	
100	voluntary associations or business trusts	25.00
101	(O) Plus for each additional party to the merger in excess	
102	of two	5.00

160 (D) For acceptance, indexing and recordation of service
 161 of process any corporation, limited partnership, limited
 162 liability partnership, limited liability company, voluntary
 163 association, business trust, insurance company, person or
 164 other entity as permitted by law 15.00

165 (E) For shipping and handling expenses for execution of
 166 service of process by certified mail upon any defendant
 167 within the United States, which fee is to be deposited to the
 168 special revenue account established in this section for the
 169 operation of the office of the Secretary of State \$5.00

170 (F) For shipping and handling expenses for execution of
 171 service of process upon any defendant outside the United
 172 States by registered mail, which fee is to be deposited to the
 173 special revenue account established in this section for the
 174 operation of the office of the Secretary of State 15.00

175 (7) For a search of records of the office conducted by
 176 employees of or at the expense of the Secretary of State upon
 177 request, as follows:

178 (A) For any search of archival records maintained at sites
 179 other than the office of the Secretary of State
 180 no less than 10.00

181 (B) For searches of archival records maintained at sites
 182 other than the office of the Secretary of State which require
 183 more than one hour, for each hour or fraction of an hour
 184 consumed in making such search 10.00

185 (C) For any search of records maintained on site for the
 186 purpose of obtaining copies of documents or printouts of data
 187 5.00

188 (D) For any search of records maintained in electronic
 189 format which requires special programming to be performed
 190 by the state information services agency or other vendor
 191 any actual cost, but not less than 25.00

192 (E) The cost of the search is in addition to the cost of any
 193 copies or printouts prepared or any certificate issued pursuant
 194 to or based on the search.

195 (F) For recording any paper for which no specific fee is
 196 prescribed \$5.00

197 (8) For producing and providing photocopies or printouts
 198 of electronic data of specific records upon request, as
 199 follows:

200 (A) For a copy of any paper or printout of electronic data,
 201 if one sheet 1.00

202 (B) For each sheet after the first50

203 (C) For sending the copies or lists by fax transmission
 204 5.00

205 (D) For producing and providing photocopies of lists,
 206 reports, guidelines and other documents produced in multiple
 207 copies for general public use, a publication price to be
 208 established by the Secretary of State at a rate approximating
 209 2.00 plus .10 per page and rounded to the nearest dollar.

210 (E) For electronic copies of records obtained in data
 211 format on disk, the cost of the record in the least expensive
 212 available printed format, plus, for each required disk, which
 213 shall be provided by the Secretary of State 5.00

214 (b) The Secretary of State may propose legislative rules
 215 for promulgation for charges for on-line electronic access to

216 database information or other information maintained by the
217 Secretary of State.

218 (c) For any other work or service not enumerated in this
219 subsection, the fee prescribed elsewhere in this code or a rule
220 promulgated under the authority of this code.

221 (d) The records maintained by the Secretary of State are
222 prepared and indexed at the expense of the state and those
223 records shall not be obtained for commercial resale without
224 the written agreement of the state to a contract including
225 reimbursement to the state for each instance of resale.

226 (e) The Secretary of State may provide printed or
227 electronic information free of charge as he or she considers
228 necessary and efficient for the purpose of informing the
229 general public or the news media.

230 (f) There is hereby continued in the State Treasury a
231 special revenue account to be known as the “service fees and
232 collections” account. Expenditures from the account shall be
233 used for the operation of the office of the Secretary of State
234 and are not authorized from collections, but are to be made
235 only in accordance with appropriation by the Legislature and
236 in accordance with the provisions of article three, chapter
237 twelve of this code and upon the fulfillment of the provisions
238 set forth in article two, chapter five-a of this code.
239 Notwithstanding any other provision of this code to the
240 contrary, except as provided in subsection (h) of this section
241 and section two-a of this article, one half of all the fees and
242 service charges established in the following sections and for
243 the following purposes shall be deposited by the Secretary of
244 State or other collecting agency to that special revenue
245 account and used for the operation of the office of the
246 Secretary of State:

247 (1) The annual attorney-in-fact fee for corporations and
248 limited partnerships established in section five, article
249 twelve-c, chapter eleven of this code;

250 (2) The fees received for the sale of the State Register,
251 code of state rules and other copies established by rule and
252 authorized by section seven, article two, chapter twenty-nine-
253 a of this code;

254 (3) The registration fees, late fees and legal settlements
255 charged for registration and enforcement of the charitable
256 organizations and professional solicitations established in
257 sections five, nine and fifteen-b, article nineteen, chapter
258 twenty-nine of this code;

259 (4) The annual attorney-in-fact fee for limited liability
260 companies as designated in section one hundred eight, article
261 one, chapter thirty-one-b of this code and established in
262 section two hundred eleven, article two of said chapter:
263 *Provided*, That after the thirtieth day of June, two thousand
264 eight, the annual report fees designated in section one
265 hundred eight, article one, chapter thirty-one-b of this code
266 shall upon collection be deposited in the general
267 administrative fees account described in subsection (h) of this
268 section;

269 (5) The filing fees and search and copying fees for
270 uniform commercial code transactions established by section
271 five hundred twenty-five, article nine, chapter forty-six of
272 this code;

273 (6) The annual attorney-in-fact fee for licensed insurers
274 established in section twelve, article four, chapter thirty-three
275 of this code;

276 (7) The fees for the application and record maintenance
277 of all notaries public established by section one hundred
278 seven, article one, chapter twenty-nine-c of this code;

279 (8) The fees for the application and record maintenance
280 of commissioners for West Virginia as established by section
281 twelve, article four, chapter twenty-nine of this code;

282 (9) The fees for registering credit service organizations as
283 established by section five, article six-c, chapter forty-six-a
284 of this code;

285 (10) The fees for registering and renewing a West
286 Virginia limited liability partnership as established by section
287 one, article ten, chapter forty-seven-b of this code;

288 (11) The filing fees for the registration and renewal of
289 trademarks and service marks established in section
290 seventeen, article two, chapter forty-seven of this code;

291 (12) All fees for services, the sale of photocopies and
292 data maintained at the expense of the Secretary of State as
293 provided in this section; and

294 (13) All registration, license and other fees collected by
295 the Secretary of State not specified in this section.

296 (g) Any balance in the service fees and collections
297 account established by this section which exceeds five
298 hundred thousand dollars as of the thirtieth day of June, two
299 thousand three, and each year thereafter, shall be expired to
300 the state fund, General Revenue Fund.

301 (h)(1) Effective the first day of July, two thousand eight,
302 there is hereby created in the State Treasury a special revenue
303 account to be known as the general administrative fees
304 account. Expenditures from the account shall be used for the
305 operation of the office of the Secretary of State and are not
306 authorized from collections, but are to be made only in
307 accordance with appropriation by the Legislature and in
308 accordance with the provisions of article three, chapter

309 twelve of this code and upon the fulfillment of the provisions
310 set forth in article two, chapter eleven-b of this code:
311 *Provided*, That for the fiscal year ending the thirtieth day of
312 June, two thousand nine, expenditures are authorized from
313 collections rather than pursuant to an appropriation by the
314 Legislature. Any balance in the account at the end of each
315 fiscal year shall not revert to the general revenue fund but
316 shall remain in the fund and be expended as provided by this
317 subsection.

318 (2) After the thirtieth day of June, two thousand eight, all
319 the fees and service charges established in section two-a of
320 this article for the following purposes shall be collected and
321 deposited by the Secretary of State or other collecting agency
322 in the general administrative fees account and used for the
323 operation of the office of the Secretary of State:

324 (A) The annual report fees paid to the Secretary of State
325 by corporations, limited partnerships, domestic limited
326 liability companies and foreign limited liability companies;

327 (B) The fees for the issuance of a certificate relating to
328 the initial registration of a corporation, limited partnership,
329 domestic limited liability company or foreign limited liability
330 company described in subdivision (2), subsection (a) of this
331 section; and

332 (C) The fees for the purchase of data and updates related
333 to the State's Business Organizations Database described in
334 section two-a of this article.

335 (i) There is continued in the office of the Secretary of
336 State a noninterest bearing, escrow account to be known as
337 the "prepaid fees and services account". This account shall
338 be for the purpose of allowing customers of the Secretary of
339 State to prepay for services, with payment to be held in
340 escrow until services are rendered. Payments deposited in
341 the account shall remain in the account until services are

342 rendered by the Secretary of State and at that time the fees
343 will be reallocated to the appropriate general or special
344 revenue accounts. There shall be no fee charged by the
345 secretary of state to the customer for the use of this account
346 and the customer may request the return of any moneys
347 maintained in the account at any time without penalty. The
348 assets of the prepaid fees and services account do not
349 constitute public funds of the state and are available solely
350 for carrying out the purposes of this section.



CHAPTER 194

**(Com. Sub. for H.B. 4617 - By Delegates Webster, Proudfoot,
Stemple and Ellem)**

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §31B-1-111 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-5-504 of said code; to amend and reenact §31D-15-1510 of said code; to amend and reenact §31E-5-504 of said code; to amend and reenact §31E-14-1410 of said code; to amend and reenact §46A-2-137 of said code; to amend and reenact §47-9-4 of said code; and to amend and reenact §56-3-31 and §56-3-33 of said code, all relating to service of process; service on corporation for-profit; service on corporation nonprofit; service on foreign corporation; service of process on certain nonresidents; constituting the Secretary of State as attorney-in-fact for all limited partnerships; service of process against nonresidents involved in motor vehicle accidents; service of process against nonresidents having certain contracts with this state.

Be it enacted by the Legislature of West Virginia:

That §31B-1-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-5-504 of said code be amended and reenacted; that §31D-15-1510 of said code be amended and reenacted; that §31E-5-504 of said code be amended and reenacted; that §31E-14-1410 of said code be amended and reenacted; that §46A-2-137 of said code be amended and reenacted; that §47-9-4 of said code be amended and reenacted; and that §56-3-31 and §56-3-33 of said code be amended and reenacted, all to read as follows:

Chapter

- 31B. Uniform Limited Liability Company Act.
- 31D. West Virginia Business Corporation Act.
- 31E. West Virginia Nonprofit Corporation Act.
- 46A. West Virginia Consumer Credit and Protection Act.
- 47. Regulation of Trade.
- 56. Pleading and Practice.

**CHAPTER 31B. UNIFORM LIMITED LIABILITY
COMPANY ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

1 (a) An agent for service of process appointed by a limited
2 liability company or a foreign limited liability company is an
3 agent of the company for service of any process, notice or
4 demand required or permitted by law to be served upon the
5 company.

6 (b) If a limited liability company or foreign limited
7 liability company fails to appoint or maintain an agent for
8 service of process in this state or the agent for service of
9 process cannot with reasonable diligence be found at the
10 agent's address, the Secretary of State is an agent of the
11 company upon whom process, notice or demand may be
12 served.

13 (c) Service of any process, notice or demand on the
14 Secretary of State may be made by delivering to and leaving
15 with the Secretary of State, the assistant Secretary of State or
16 clerk having charge of the limited liability company
17 department of the Secretary of State, the original process,
18 notice or demand and two copies thereof for each defendant,
19 along with the fee required by section two, article one,
20 chapter fifty-nine of this code. No process, notice or demand
21 may be served on or accepted by the Secretary of State less
22 than ten days before the return day thereof. The Secretary of
23 State, upon being served with or accepting any process,
24 notice or demand, shall: (1) File in his or her office a copy of
25 the process, notice or demand, endorsed as of the time of
26 service or acceptance; and (2) transmit one copy of the
27 process, notice or demand by registered or certified mail,
28 return receipt requested, by a means which may include
29 electronic issuance and acceptance of electronic return
30 receipts, to the limited liability company's registered agent:
31 *Provided*, That if there is no registered agent, then to the
32 individual whose name and address was last given to the
33 Secretary of State's office as the person designated to receive
34 process, notice or demand. If no person has been named,
35 then to the principal office of the limited liability company at
36 the address last given to the Secretary of State's office and if
37 no address is available on record with the Secretary of State
38 then to the address provided on the original process, notice or
39 demand, if available; and (3) transmit the original process,
40 notice or demand to the clerk's office of the court from which
41 the process, notice or demand was issued. Such service or
42 acceptance of process, notice or demand is sufficient if the
43 return receipt is signed by an agent or employee of such
44 company, or the registered or certified mail so sent by the
45 Secretary of State is refused by the addressee and the
46 registered or certified mail is returned to the Secretary of
47 State, showing the stamp of the United States postal service
48 that delivery thereof has been refused, and such return receipt
49 or registered or certified mail is received by the Secretary of
50 State by a means which may include electronic issuance and

51 acceptance of electronic return receipts. After receiving
52 verification from the United States postal service that
53 acceptance of process, notice or demand has been signed, the
54 Secretary of State shall notify the clerk's office of the court
55 from which the process, notice or demand was issued by a
56 means which may include electronic notification. If the
57 process, notice or demand was refused or undeliverable by
58 the United States postal service the Secretary of State shall
59 return refused or undeliverable mail to the clerk's office of
60 the court from which the process, notice or demand was
61 issued. No process, notice or demand may be served on the
62 Secretary of State or accepted by him or her less than ten
63 days before the return day of the process or notice. The court
64 may order continuances as may be reasonable to afford each
65 defendant opportunity to defend the action or proceedings.

66 (d) The Secretary of State shall keep a record of all
67 processes, notices and demands served pursuant to this
68 section and record the time of and the action taken regarding
69 the service.

70 (e) This section does not affect the right to serve process,
71 notice or demand in any manner otherwise provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

Article

5. Office and Agent.

15. Foreign Corporations.

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, as
14 evidenced by the postmark, if mailed postpaid and correctly
15 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;(2) transmit one copy of
40 the process or notice by registered or certified mail, return
41 receipt requested, by a means which may include electronic
42 issuance and acceptance of electronic return receipts, to: (A)
43 The corporation's registered agent; or (B) if there is no
44 registered agent, to the individual whose name and address
45 was last given to the Secretary of State's office as the person
46 to whom notice and process are to be sent and if no person
47 has been named, to the principal office of the corporation as
48 that address was last given to the Secretary of State's office.
49 If no address is available on record with the Secretary of
50 State, then to the address provided on the original process,
51 notice or demand, if available; and (3) transmit the original
52 process, notice or demand to the clerk's office of the court
53 from which the process, notice or demand was issued.
54 Service or acceptance of process or notice is sufficient if
55 return receipt is signed by an agent or employee of the
56 corporation, or the registered or certified mail sent by the
57 Secretary of State is refused by the addressee and the
58 registered or certified mail is returned to the Secretary of
59 State, or to his or her office, showing the stamp of the United
60 States postal service that delivery has been refused, and the
61 return receipt or registered or certified mail is received by the
62 Secretary of State by a means which may include electronic
63 issuance and acceptance of electronic return receipts. After
64 receiving verification from the United States postal service
65 that acceptance of process, notice or demand has been signed,
66 the Secretary of State shall notify the clerk's office of the
67 court from which the process, notice or demand was issued
68 by a means which may include electronic notification. If the
69 process, notice or demand was refused or undeliverable by
70 the United States postal service the Secretary of State shall
71 return the refused or undeliverable mail to the clerk's office
72 of the court from which the process, notice or demand was
73 issued. No process or notice may be served on the Secretary
74 of State or accepted by him or her less than ten days before
75 the return day of the process or notice. The court may order

76 continuances as may be reasonable to afford each defendant
77 opportunity to defend the action or proceedings.

78 (d) This section does not prescribe the only means, or
79 necessarily the required means, of serving a corporation.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1510. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation
2 authorized to transact business in this state is the
3 corporation's agent for service of process, notice or demand
4 required or permitted by law to be served on the foreign
5 corporation.

6 (b) A foreign corporation may be served by registered or
7 certified mail, return receipt requested, addressed to the
8 secretary of the foreign corporation at its principal office
9 shown in its application for a certificate of authority or in its
10 most recent return required pursuant to section three, article
11 twelve-c, chapter eleven of this code if the foreign
12 corporation:

13 (1) Has no registered agent or its registered agent cannot
14 with reasonable diligence be served;

15 (2) Has withdrawn from transacting business in this state
16 under section one thousand five hundred twenty of this
17 article; or

18 (3) Has had its certificate of authority revoked under
19 section one thousand five hundred thirty-one of this article.

20 (c) Service is perfected under subsection (b) of this section
21 at the earliest of:

22 (1) The date the foreign corporation receives the mail;

23 (2) The date shown on the return receipt, if signed on
24 behalf of the foreign corporation; or

25 (3) Five days after its deposit in the United States mail, as
26 evidenced by the postmark, if mailed postpaid and correctly
27 addressed.

28 (d) In addition to the methods of service on a foreign
29 corporation provided in subsections (a) and (b) of this
30 section, the Secretary of State is hereby constituted the
31 attorney-in-fact for and on behalf of each foreign corporation
32 authorized to do or transact business in this state pursuant to
33 the provisions of this chapter. The Secretary of State has the
34 authority to accept service of notice and process on behalf of
35 each corporation and is an agent of the corporation upon
36 whom service of notice and process may be made in this state
37 for and upon each corporation. No act of a corporation
38 appointing the Secretary of State as attorney-in-fact is
39 necessary. Service of any process, notice or demand on the
40 Secretary of State may be made by delivering to and leaving
41 with the Secretary of State the original process, notice or
42 demand and one copy of the process, notice or demand for
43 each defendant, along with the fee required by section two,
44 article one, chapter fifty-nine of this code. Immediately after
45 being served with or accepting any process or notice, the
46 Secretary of State shall: (1) File in his or her office a copy of
47 the process or notice, endorsed as of the time of service or
48 acceptance; (2) transmit one copy of the process or notice by
49 registered or certified mail, return receipt requested, by a
50 means which may include electronic issuance and acceptance
51 of electronic return receipts, to: (A) The foreign
52 corporation's registered agent; or (B) if there is no registered
53 agent, to the individual whose name and address was last
54 given to the Secretary of State's office as the person to whom
55 notice and process are to be sent and if no person has been
56 named, to the principal office of the foreign corporation as
57 that address was last given to the Secretary of State's office.
58 If no address is available on record with the Secretary of

59 State, then to the address provided on the original process,
60 notice or demand, if available; and (3) transmit the original
61 process, notice or demand to the clerk's office of the court
62 from which the process, notice or demand was issued.
63 Service or acceptance of process or notice is sufficient if
64 return receipt is signed by an agent or employee of the
65 corporation, or the registered or certified mail sent by the
66 Secretary of State is refused by the addressee and the
67 registered or certified mail is returned to the Secretary of
68 State, or to his or her office, showing the stamp of the United
69 States postal service that delivery has been refused, and the
70 return receipt or registered or certified mail is received by the
71 Secretary of State by a means which may include electronic
72 issuance and acceptance of electronic return receipts. After
73 receiving verification from United States postal service that
74 acceptance of process, notice or demand has been accepted,
75 the Secretary of State shall notify the clerk's office of the
76 court from which the process, notice or demand was issued
77 by means which may include electronic notification. If the
78 process, notice or demand was refused or undeliverable by
79 the United States postal service the Secretary of State shall
80 return the refused or undeliverable mail to the clerk's office
81 of the court from which the process, notice or demand was
82 issued. No process or notice may be served on the Secretary
83 of State or accepted by him or her less than ten days before
84 the return day of the process or notice. The court may order
85 continuances as may be reasonable to afford each defendant
86 opportunity to defend the action or proceedings.

87 (e) Any foreign corporation doing or transacting business
88 in this state without having been authorized to do so pursuant
89 to the provisions of this chapter is conclusively presumed to
90 have appointed the Secretary of State as its attorney-in-fact
91 with authority to accept service of notice and process on
92 behalf of the corporation and upon whom service of notice
93 and process may be made in this state for and upon the
94 corporation in any action or proceeding arising from
95 activities described in section one thousand five hundred one

96 of this article. No act of a corporation appointing the
97 Secretary of State as its attorney-in-fact is necessary.
98 Immediately after being served with or accepting any process
99 or notice, of which process or notice one copy for each
100 defendant are to be furnished to the Secretary of State with
101 the original notice or process, together with the fee required
102 by section two, article one, chapter fifty-nine of this code, the
103 Secretary of State shall file in his or her office a copy of the
104 process or notice, with a note endorsed of the time of service
105 or acceptance, and transmit one copy of the process or notice
106 by registered or certified mail, return receipt requested, by a
107 means which may include electronic issuance and acceptance
108 of electronic return receipts, to the corporation at the address
109 of its principal office, which address shall be stated in the
110 process or notice. The service or acceptance of process or
111 notice is sufficient if the return receipt is signed by an agent
112 or employee of the corporation, or the registered or certified
113 mail sent by the Secretary of State is refused by the addressee
114 and the registered or certified mail is returned to the
115 Secretary of State, or to his or her office, showing thereon the
116 stamp of the United States postal service that delivery thereof
117 has been refused and the return receipt or registered or
118 certified mail is received by the Secretary of State by a means
119 which may include electronic issuance and acceptance of
120 electronic return receipts. After receiving verification from
121 the United States postal service that acceptance of process,
122 notice or demand has been signed, the Secretary of State shall
123 notify the clerk's office of the court from which the process,
124 notice or demand was issued by a means which may include
125 electronic notification. If the process, notice or demand was
126 refused or undeliverable by the United States postal service
127 the Secretary of State shall return refused or undeliverable
128 mail to the clerk's office of the court from which the process,
129 notice or demand was issued. No process or notice may be
130 served on the Secretary of State or accepted by him or her
131 less than ten days before the return date thereof. The court
132 may order continuances as may be reasonable to afford each
133 defendant opportunity to defend the action or proceedings.

134 (f) This section does not prescribe the only means, or
135 necessarily the required means, of serving a foreign
136 corporation.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

Article

5. Office and Agent.

14. Foreign Corporations.

ARTICLE 5. OFFICE AND AGENT.

§31E-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, as
14 evidenced by the postmark, if mailed postpaid and correctly
15 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. Immediately after
32 being served with or accepting any process or notice, the
33 Secretary of State shall: (1) File in his or her office a copy of
34 the process or notice, endorsed as of the time of service, or
35 acceptance; (2) transmit one copy of the process or notice by
36 registered or certified mail, return receipt requested, by a
37 means which may include electronic issuance and acceptance
38 of electronic return receipts, to: (A) The corporation's
39 registered agent; or (B) if there is no registered agent, to the
40 individual whose name and address was last given to the
41 Secretary of State's office as the person to whom notice and
42 process are to be sent, and if no person has been named, to
43 the principal office of the corporation as that address was last
44 given to the Secretary of State's office; and if no address is
45 available on record with the Secretary of State, then to the
46 address provided on the original process, notice or demand,
47 if available; and (3) transmit the original process, notice or
48 demand to the clerk's office of the court from which the
49 process, notice or demand was issued. Service or acceptance
50 of process or notice is sufficient if return receipt is signed by
51 an agent or employee of the corporation, or the registered or
52 certified mail sent by the Secretary of State is refused by the
53 addressee and the registered or certified mail is returned to
54 the Secretary of State, or to his or her office, showing the
55 stamp of the United States postal service that delivery has
56 been refused, and the return receipt or registered or certified

57 mail is received by the Secretary of State by a means which
58 may include electronic issuance and acceptance of electronic
59 return receipts. After receiving verification from the United
60 States postal service that acceptance of process, notice or
61 demand has been signed, the Secretary of State shall notify
62 the clerk's office of the court from which the process, notice
63 or demand was issued by a means which may include
64 electronic notification. If the process, notice or demand was
65 refused or undeliverable by the United States postal service,
66 the Secretary of State shall return the refused or
67 undeliverable mail to the clerk's office from which the
68 process, notice or demand was issued. No process or notice
69 may be served on the Secretary of State or accepted by him
70 or her less than ten days before the return day of the process
71 or notice. The court may order continuances as may be
72 reasonable to afford each defendant opportunity to defend the
73 action or proceedings.

74 (d) This section does not prescribe the only means, or
75 necessarily the required means of serving a corporation.

ARTICLE 14. FOREIGN CORPORATIONS.

PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1410. Service on foreign corporation.

1 (a) The registered agent of a foreign corporation
2 authorized to conduct activities in this state is the
3 corporation's agent for service of process, notice, or demand
4 required or permitted by law to be served on the foreign
5 corporation.

6 (b) A foreign corporation may be served by registered or
7 certified mail, return receipt requested, addressed to the
8 secretary of the foreign corporation at its principal office
9 shown in its application for a certificate of authority or in its
10 most recent return required pursuant to section three, article

11 twelve-c, chapter eleven of this code if the foreign
12 corporation:

13 (1) Has no registered agent or its registered agent cannot
14 with reasonable diligence be served;

15 (2) Has withdrawn from conducting activities in this state
16 under section one thousand four hundred twenty of this
17 article; or

18 (3) Has had its certificate of authority revoked under
19 section one thousand four hundred thirty-one of this article.

20 (c) Service is perfected under subsection (b) of this section
21 at the earliest of:

22 (1) The date the foreign corporation receives the mail;

23 (2) The date shown on the return receipt, if signed on
24 behalf of the foreign corporation; or

25 (3) Five days after its deposit in the United States mail, as
26 evidenced by the postmark, if mailed postpaid and correctly
27 addressed.

28 (d) In addition to the methods of service on a foreign
29 corporation provided in subsections (a) and (b) of this
30 section, the Secretary of State is hereby constituted the
31 attorney-in-fact for and on behalf of each foreign corporation
32 authorized to conduct affairs in this state pursuant to the
33 provisions of this chapter. The Secretary of State has the
34 authority to accept service of notice and process on behalf of
35 each corporation and is an agent of the corporation upon
36 whom service of notice and process may be made in this state
37 for and upon each corporation. No act of a corporation
38 appointing the Secretary of State as attorney-in-fact is
39 necessary. Service of any process, notice or demand on the
40 Secretary of State may be made by delivering to and leaving

41 with the Secretary of State the original process, notice or
42 demand and two copies of the process, notice or demand for
43 each defendant, along with the fee required by section two,
44 article one, chapter fifty-nine of this code. Immediately after
45 being served with or accepting any process or notice, the
46 Secretary of State shall: (1) File in his or her office a copy of
47 the process or notice, endorsed as of the time of service, or
48 acceptance; (2) transmit one copy of the process or notice by
49 registered or certified mail, return receipt requested, by a
50 means which may include electronic issuance and acceptance
51 of electronic return receipts, to: (A) The foreign corporation's
52 registered agent; or (B) if there is no registered agent, to the
53 individual whose name and address was last given to the
54 Secretary of State's office as the person to whom notice and
55 process are to be sent, and if no person has been named, to
56 the principal office of the foreign corporation as that address
57 was last given to the Secretary of State's office. If no address
58 is available on record with the Secretary of State, then to the
59 address provided on the original process, notice or demand,
60 if available; and (3) transmit the original process, notice or
61 demand to the clerk's office of the court from which the
62 process, notice or demand was issued. Service or acceptance
63 of process or notice is sufficient if return receipt is signed by
64 an agent or employee of the corporation, or the registered or
65 certified mail sent by the Secretary of State is refused by the
66 addressee and the registered or certified mail is returned to
67 the Secretary of State, or to his or her office, showing the
68 stamp of the United States postal service that delivery has
69 been refused, and the return receipt or registered or certified
70 mail is received by the Secretary of State by a means which
71 may include electronic issuance and acceptance of electronic
72 return receipts. After receiving verification from United
73 States postal service that acceptance of process, notice or
74 demand has been accepted, the Secretary of State shall notify
75 the clerk's office of the court from which the process, notice
76 or demand was issued by means which may include
77 electronic notification. If the process, notice or demand was

78 refused or undeliverable by the United States postal service
79 the Secretary of State shall return the refused or
80 undeliverable mail to the clerk's office of the court from
81 which the process, notice or demand was issued. No process
82 or notice may be served on the Secretary of State or accepted
83 by him or her less than ten days before the return day of the
84 process or notice. The court may order continuances as may
85 be reasonable to afford each defendant opportunity to defend
86 the action or proceedings.

87 (e) Any foreign corporation conducting affairs in this state
88 without having been authorized to do so pursuant to the
89 provisions of this chapter is conclusively presumed to have
90 appointed the Secretary of State as its attorney-in-fact with
91 authority to accept service of notice and process on behalf of
92 the corporation and upon whom service of notice and process
93 may be made in this state for and upon the corporation in any
94 action or proceeding arising from activities described in
95 section one thousand four hundred one of this article. No act
96 of a corporation appointing the Secretary of State as its
97 attorney-in-fact is necessary. Immediately after being served
98 with or accepting any process or notice, of which process or
99 notice two copies for each defendant are to be furnished to
100 the Secretary of State with the original notice or process,
101 together with the fee required by section two, article one,
102 chapter fifty-nine of this code, the Secretary of State shall file
103 in his or her office a copy of the process or notice, with a
104 note endorsed of the time of service or acceptance, and
105 transmit one copy of the process or notice by registered or
106 certified mail, return receipt requested, by a means which
107 may include electronic issuance and acceptance of electronic
108 return receipts, to the corporation at the address of its
109 principal office, which address shall be stated in the process
110 or notice. The service or acceptance of process or notice is
111 sufficient if the return receipt is signed by an agent or
112 employee of the corporation, or the registered or certified
113 mail sent by the Secretary of State is refused by the addressee
114 and the registered or certified mail is returned to the

115 Secretary of State, or to his or her office, showing thereon the
116 stamp of the United States postal service that delivery thereof
117 has been refused, and the return receipt or registered or
118 certified mail is received by the Secretary of State by a means
119 which may include electronic issuance and acceptance of
120 electronic return receipts. After receiving verification from
121 the United States postal service that acceptance of process,
122 notice or demand has been signed, the Secretary of State shall
123 notify the clerk's office of the court from which the process,
124 notice or demand was issued by a means which may include
125 electronic notification. If the process, notice or demand was
126 refused or undeliverable by the United States postal service
127 the Secretary of State shall return refused or undeliverable
128 mail to the clerk's office of the court from which the process,
129 notice or demand was issued. No process or notice may be
130 served on the Secretary of State or accepted by him or her
131 less than ten days before the return date thereof. The court
132 may order continuances as may be reasonable to afford each
133 defendant opportunity to defend the action or proceedings.

134 (f) This section does not prescribe the only means, or
135 necessarily the required means, of serving a foreign
136 corporation.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident corporation
2 authorized to do business in this state pursuant to the
3 provisions of chapter thirty-one of this code, who takes or
4 holds any negotiable instrument, nonnegotiable instrument,
5 or contract or other writing, arising from a consumer credit
6 sale or consumer lease which is subject to the provisions of

7 this article, other than a sale or lease primarily for an
8 agricultural purpose, or who is a lender subject to the
9 provisions of section one hundred three of this article, shall
10 be conclusively presumed to have appointed the Secretary of
11 State as his attorney-in-fact with authority to accept service
12 of notice and process in any action or proceeding brought
13 against him arising out of such consumer credit sale,
14 consumer lease or consumer loan. A person shall be
15 considered a nonresident hereunder if he is a nonresident at
16 the time such service of notice and process is sought. No act
17 of such person appointing the Secretary of State shall be
18 necessary. Immediately after being served with or accepting
19 any such process or notice, of which process or notice two
20 copies for each defendant shall be furnished the Secretary of
21 State with the original notice or process, together with the fee
22 required by section two, article one, chapter fifty-nine of this
23 code, the Secretary of State shall file in his office a copy of
24 such process or notice, with a note thereon endorsed of the
25 time of service or acceptance, as the case may be, and
26 transmit one copy of such process or notice by registered or
27 certified mail, return receipt requested, by a means which
28 may include electronic issuance and acceptance of electronic
29 return receipts, to such person at his address, which address
30 shall be stated in such process or notice: *Provided*, That after
31 receiving verification from the United States postal service
32 that acceptance of process or notice has been signed, the
33 Secretary of State shall notify the clerk's office of the court
34 from which the process or notice was issued by a means
35 which may include electronic notification. If the process or
36 notice was refused or undeliverable by the United States
37 postal service the Secretary of State shall return refused or
38 undeliverable mail to the clerk's office of the court from
39 which the process or notice was issued. But no process or
40 notice shall be served on the Secretary of State or accepted
41 fewer than ten days before the return date thereof. The court
42 may order such continuances as may be reasonable to afford
43 each defendant opportunity to defend the action or proceeding.

44 The provisions for service of process or notice herein are
45 cumulative and nothing herein contained shall be construed
46 as a bar to the plaintiff in any action from having process or
47 notice in such action served in any other mode and manner
48 provided by law.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

1 The Secretary of State is hereby constituted the attorney-
2 in-fact for and on behalf of every limited partnership created
3 by virtue of the laws of this state and every foreign limited
4 partnership authorized to conduct affairs or do or transact
5 business herein pursuant to the provisions of this article, with
6 authority to accept service of notice and process on behalf of
7 every such limited partnership and upon whom service of
8 notice and process may be made in this state for and upon
9 every such limited partnership. No act of such limited
10 partnership appointing the Secretary of State such attorney-
11 in-fact shall be necessary. Immediately after being served
12 with or accepting any such process or notice, of which
13 process or notice two copies for each defendant shall be
14 furnished the Secretary of State with the original notice or
15 process, together with the fee required by section two, article
16 one, chapter fifty-nine of this code, the Secretary of State
17 shall file in his office a copy of such process or notice, with
18 a note thereon endorsed of the time of service or acceptance,
19 as the case may be, and transmit one copy of such process or
20 notice by registered or certified mail, return receipt requested,

21 to the person to whom notice and process shall be sent,
22 whose name and address were last furnished to the state
23 officer at the time authorized by statute to accept service of
24 notice and process and upon whom notice and process may
25 be served; and if no such person has been named, to the
26 principal office of the limited partnership at the address last
27 furnished to the state officer at the time authorized by statute
28 to accept service of process and upon whom process may be
29 served, as required by law, or if no address is available on
30 record with the Secretary of State then to the address
31 provided on the original process or process, if available. No
32 process or notice shall be served on the Secretary of State or
33 accepted by him less than ten days before the return day
34 thereof. Such limited partnership shall pay the annual fee
35 prescribed by article twelve, chapter eleven of this code for
36 the services of the Secretary of State as its attorney-in-fact.

37 Any foreign limited partnership which shall conduct
38 affairs or do or transact business in this state without having
39 been authorized so to do pursuant to the provisions of this
40 article shall be conclusively presumed to have appointed the
41 Secretary of State as its attorney-in-fact with authority to
42 accept service of notice and process on behalf of such limited
43 partnership and upon whom service of notice and process
44 may be made in this state for and upon every such limited
45 partnership in any action or proceeding described in the next
46 following paragraph of this section. No act of such limited
47 partnership appointing the Secretary of State as such
48 attorney-in-fact shall be necessary. Immediately after being
49 served with or accepting any such process or notice, of which
50 process or notice two copies for each defendant shall be
51 furnished the Secretary of State with the original notice or
52 process, together with the fee required by section two, article
53 one, chapter fifty-nine of this code, the Secretary of State
54 shall file in his office a copy of such process or notice, with
55 a note thereon endorsed of the time of service or acceptance,
56 as the case may be, and transmit one copy of such process or
57 notice by registered or certified mail, return receipt requested,

58 by a means which may include electronic issuance and
59 acceptance of electronic return receipts, to such limited
60 partnership at the address of its principal office, which
61 address shall be stated in such process or notice. Such service
62 or acceptance of such process or notice shall be sufficient if
63 such return receipt shall be signed by an agent or employee
64 of such limited partnership. After receiving verification from
65 the United States postal service that acceptance of process or
66 notice has been signed, the Secretary of State shall notify the
67 clerk's office of the court from which the process or notice
68 was issued by a means which may include electronic
69 notification. If the process or notice was refused or
70 undeliverable by the United States postal service the
71 Secretary of State shall return refused or undeliverable mail
72 to the clerk's office of the court from which the process or
73 notice was issued. No process or notice shall be served on the
74 Secretary of State or accepted by him less than ten days
75 before the return date thereof. The court may order such
76 continuances as may be reasonable to afford each defendant
77 opportunity to defend the action or proceedings. For the
78 purpose of this section, a foreign limited partnership not
79 authorized to conduct affairs or do or transact business in this
80 state pursuant to the provisions of this article shall
81 nevertheless be deemed to be conducting affairs or doing or
82 transacting business herein (a) if such limited partnership
83 makes a contract to be performed, in whole or in part, by any
84 party thereto in this state, (b) if such limited partnership
85 commits a tort, in whole or in part, in this state, or (c) if such
86 limited partnership manufactures, sells, offers for sale or
87 supplies any product in a defective condition and such
88 product causes injury to any person or property within this
89 state notwithstanding the fact that such limited partnership
90 had no agents, servants or employees or contacts within this
91 state at the time of said injury. The making of such contract,
92 the committing of such tort or the manufacture or sale, offer
93 of sale or supply of such defective product as herein above
94 described shall be deemed to be the agreement of such
95 limited partnership that any notice or process served upon, or

96 accepted by, the Secretary of State pursuant to the next
97 preceding paragraph of this section in any action or
98 proceeding against such limited partnership arising from or
99 growing out of such contract, tort or manufacture or sale,
100 offer of sale or supply of such defective product shall be of
101 the same legal force and validity as process duly served on
102 such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

- §56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.
- §56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

1 (a) Every nonresident, for the privilege of operating a
2 motor vehicle on a public street, road or highway of this
3 state, either personally or through an agent, appoints the
4 Secretary of State, or his or her successor in office, to be his
5 or her agent or attorney-in-fact upon whom may be served all
6 lawful process in any action or proceeding against him or her
7 in any court of record in this state arising out of any accident
8 or collision occurring in the State of West Virginia in which
9 the nonresident was involved: *Provided*, That in the event
10 process against a nonresident defendant cannot be effected
11 through the Secretary of State, as provided by this section, for
12 the purpose only of service of process, the nonresident
13 motorist shall be considered to have appointed as his or her
14 agent or attorney-in-fact any insurance company which has

15 a contract of automobile or liability insurance with the
16 nonresident defendant.

17 (b) For purposes of service of process as provided in this
18 section, every insurance company shall be considered the
19 agent or attorney-in-fact of every nonresident motorist
20 insured by that company if the insured nonresident motorist
21 is involved in any accident or collision in this state and
22 service of process cannot be effected upon the nonresident
23 through the office of the Secretary of State. Upon receipt of
24 process as provided in this section, the insurance company
25 may, within thirty days, file an answer or other pleading or
26 take any action allowed by law on behalf of the defendant.

27 (c) A nonresident operating a motor vehicle in this state,
28 either personally or through an agent, is considered to
29 acknowledge the appointment of the Secretary of State, or, as
30 the case may be, his or her automobile insurance company,
31 as his or her agent or attorney-in-fact, or the agent or
32 attorney-in-fact of his or her administrator, administratrix,
33 executor or executrix in the event the nonresident dies, and
34 furthermore is considered to agree that any process against
35 him or her or against his or her administrator, administratrix,
36 executor or executrix, which is served in the manner provided
37 in this section, shall be of the same legal force and validity as
38 though the nonresident or his or her administrator,
39 administratrix, executor or executrix were personally served
40 with a summons and complaint within this state.

41 Any action or proceeding may be instituted, continued or
42 maintained on behalf of or against the administrator,
43 administratrix, executor or executrix of any nonresident who
44 dies during or subsequent to an accident or collision resulting
45 from the operation of a motor vehicle in this state by the
46 nonresident or his or her duly authorized agent.

47 (d) Service of process upon a nonresident defendant shall
48 be made by leaving the original and two copies of both the

49 summons and complaint, together with the bond certificate of
50 the clerk, and the fee required by section two, article one,
51 chapter fifty-nine of this code with the Secretary of State, or
52 in his or her office, and the service shall be sufficient upon
53 the nonresident defendant or, if a natural person, his or her
54 administrator, administratrix, executor or executrix:
55 *Provided*, That notice of service and a copy of the summons
56 and complaint shall be sent by registered or certified mail,
57 return receipt requested, by a means which may include
58 electronic issuance and acceptance of electronic return
59 receipts, by the Secretary of State to the nonresident
60 defendant. After receiving verification from the United
61 States postal service that acceptance of process, notice or
62 demand has been signed, the Secretary of State shall notify
63 the clerk's office of the court from which the process, notice
64 or demand was issued by a means which may include
65 electronic notification. If the process, notice or demand was
66 refused or undeliverable by the United States postal service
67 the Secretary of State shall return refused or undeliverable
68 mail to the clerk's office of the court from which the process,
69 notice or demand was issued. The court may order any
70 reasonable continuances to afford the defendant opportunity
71 to defend the action.

72 (e) The fee remitted to the Secretary of State at the time
73 of service shall be taxed in the costs of the proceeding. The
74 Secretary of State shall keep a record in his or her office of
75 all service of process and the day and hour of service of
76 process.

77 (f) In the event service of process upon a nonresident
78 defendant cannot be effected through the Secretary of State
79 as provided by this section, service may be made upon the
80 defendant's insurance company. The plaintiff shall file with
81 the clerk of the circuit court an affidavit alleging that the
82 defendant is not a resident of this state; that process directed
83 to the Secretary of State was sent by registered or certified
84 mail, return receipt requested; that the registered or certified

85 mail was returned to the office of the Secretary of State
86 showing the stamp of the post office department that delivery
87 was refused or that the notice was unclaimed or that the
88 defendant addressee moved without any forwarding address;
89 and that the Secretary of State has complied with the
90 provisions of subsection (d) of this section. Upon receipt of
91 process the insurance company may, within thirty days, file
92 an answer or other pleading and take any action allowed by
93 law in the name of the defendant.

94 (g) The following words and phrases, when used in this
95 article, for the purpose of this article and unless a different
96 intent on the part of the Legislature is apparent from the
97 context, have the following meanings:

98 (1) "Duly authorized agent" means and includes, among
99 others, a person who operates a motor vehicle in this state for
100 a nonresident as defined in this section and chapter, in pursuit
101 of business, pleasure or otherwise, or who comes into this
102 state and operates a motor vehicle for, or with the knowledge
103 or acquiescence of, a nonresident; and includes, among
104 others, a member of the family of the nonresident or a person
105 who, at the residence, place of business or post office of the
106 nonresident, usually receives and acknowledges receipt for
107 mail addressed to the nonresident.

108 (2) "Motor vehicle" means and includes any self-
109 propelled vehicle, including a motorcycle, tractor and trailer,
110 not operated exclusively upon stationary tracks.

111 (3) "Nonresident" means any person who is not a resident
112 of this state or a resident who has moved from the state
113 subsequent to an accident or collision and among others
114 includes a nonresident firm, partnership, corporation or
115 voluntary association, or a firm, partnership, corporation or
116 voluntary association that has moved from the state
117 subsequent to an accident or collision.

118 (4) "Nonresident plaintiff or plaintiffs" means a
119 nonresident who institutes an action in a court in this state
120 having jurisdiction against a nonresident in pursuance of the
121 provisions of this article.

122 (5) "Nonresident defendant or defendants" means a
123 nonresident motorist who, either personally or through his or
124 her agent, operated a motor vehicle on a public street,
125 highway or road in this state and was involved in an accident
126 or collision which has given rise to a civil action filed in any
127 court in this state.

128 (6) "Street", "road" or "highway" means the entire width
129 between property lines of every way or place of whatever
130 nature when any part of the street, road or highway is open to
131 the use of the public, as a matter of right, for purposes of
132 vehicular traffic.

133 (7) "Insurance company" means any firm, corporation,
134 partnership or other organization which issues automobile
135 insurance.

136 (h) The provision for service of process in this section is
137 cumulative and nothing contained in this section shall be
138 construed as a bar to the plaintiff in any action from having
139 process in the action served in any other mode and manner
140 provided by law.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his or her duly
2 authorized agent, in any one or more of the acts specified in
3 subdivisions (1) through (7) of this subsection shall be

4 deemed equivalent to an appointment by such nonresident of
5 the Secretary of State, or his or her successor in office, to be
6 his or her true and lawful attorney upon whom may be served
7 all lawful process in any action or proceeding against him or
8 her, in any circuit court in this state, including an action or
9 proceeding brought by a nonresident plaintiff or plaintiffs, for
10 a cause of action arising from or growing out of such act or
11 acts, and the engaging in such act or acts shall be a
12 signification of such nonresident's agreement that any such
13 process against him or her, which is served in the manner
14 hereinafter provided, shall be of the same legal force and
15 validity as though such nonresident were personally served
16 with a summons and complaint within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this
20 state;

21 (4) Causing tortious injury in this state by an act or
22 omission outside this state if he or she regularly does or
23 solicits business, or engages in any other persistent course of
24 conduct, or derives substantial revenue from goods used or
25 consumed or services rendered in this state;

26 (5) Causing injury in this state to any person by breach of
27 warranty expressly or impliedly made in the sale of goods
28 outside this state when he or she might reasonably have
29 expected such person to use, consume or be affected by the
30 goods in this state: *Provided*, That he or she also regularly
31 does or solicits business, or engages in any other persistent
32 course of conduct, or derives substantial revenue from goods
33 used or consumed or services rendered in this state;

34 (6) Having an interest in, using or possessing real
35 property in this state; or

36 (7) Contracting to insure any person, property or risk
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely
39 upon the provisions of this section, only a cause of action
40 arising from or growing out of one or more of the acts
41 specified in subdivisions (1) through (7), subsection (a) of
42 this section may be asserted against him or her.

43 (c) Service shall be made by leaving the original and two
44 copies of both the summons and the complaint, and the fee
45 required by section two, article one, chapter fifty-nine of this
46 code with the Secretary of State, or in his or her office, and
47 such service shall be sufficient upon such nonresident:
48 *Provided*, That notice of such service and a copy of the
49 summons and complaint shall forthwith be sent by registered
50 or certified mail, return receipt requested, by a means which
51 may include electronic issuance and acceptance of electronic
52 return receipts, by the Secretary of State to the defendant at
53 his or her nonresident address and the defendant's return
54 receipt signed by himself or herself or his or her duly
55 authorized agent or the registered or certified mail so sent by
56 the Secretary of State which is refused by the addressee and
57 which registered or certified mail is returned to the Secretary
58 of State, or to his or her office, showing thereon the stamp of
59 the post-office department that delivery has been refused.
60 After receiving verification from the United States postal
61 service that acceptance of process, notice or demand has been
62 signed, the Secretary of State shall notify the clerk's office of
63 the court from which the process, notice or demand was
64 issued by a means which may include electronic notification.
65 If the process, notice or demand was refused or undeliverable
66 by the United States postal service the Secretary of State shall
67 return refused or undeliverable mail to the clerk's office of
68 the court from which the process, notice or demand was
69 issued. If any defendant served with summons and complaint
70 fails to appear and defend within thirty days of service,

71 judgment by default may be rendered against him or her at
72 any time thereafter. The court may order such continuances
73 as may be reasonable to afford the defendant opportunity to
74 defend the action or proceeding.

75 (d) The fee remitted to the Secretary of State at the time
76 of service shall be taxed in the costs of the action or
77 proceeding. The Secretary of State shall keep a record in his
78 or her office of all such process and the day and hour of
79 service thereof.

80 (e) The following words and phrases, when used in this
81 section, shall for the purpose of this section and unless a
82 different intent be apparent from the context, have the
83 following meanings:

84 (1) "Duly authorized agent" means and includes among
85 others a person who, at the direction of or with the
86 knowledge or acquiescence of a nonresident, engages in such
87 act or acts and includes among others a member of the family
88 of such nonresident or a person who, at the residence, place
89 of business or post office of such nonresident, usually
90 receives and receipts for mail addressed to such nonresident.

91 (2) "Nonresident" means any person, other than voluntary
92 unincorporated associations, who is not a resident of this state
93 or a resident who has moved from this state subsequent to
94 engaging in such act or acts, and among others includes a
95 nonresident firm, partnership or corporation or a firm,
96 partnership or corporation which has moved from this state
97 subsequent to any of said such act or acts.

98 (3) "Nonresident plaintiff or plaintiffs" means a
99 nonresident of this state who institutes an action or
100 proceeding in a circuit court in this state having jurisdiction
101 against a nonresident of this state pursuant to the provisions
102 of this section.

103 (f) The provision for service of process herein is
104 cumulative and nothing herein contained shall be construed
105 as a bar to the plaintiff in any action or proceeding from
106 having process in such action served in any other mode or
107 manner provided by the law of this state or by the law of the
108 place in which the service is made for service in that place in
109 an action in any of its courts of general jurisdiction.

110 (g) This section shall not be retroactive and the
111 provisions hereof shall not be available to a plaintiff in a
112 cause of action arising from or growing out of any of said
113 acts occurring prior to the effective date of this section.



CHAPTER 195

**(Com. Sub. for H.B. 4383 - By Delegates Stemple, Williams,
Webster, Shaver, Perry and Varner)**

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3-32, all relating to fire marshal service weapons; providing for awarding service weapon to any active or retired state fire marshal, a deputy fire marshal or assistant fire marshal; and providing for the sale of service weapon when taken out of service due to routine wear.

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 §29-3-32, to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**§29-3-32. Awarding service weapon upon retirement of fire marshal or service weapon.**

1 (a) Upon the retirement of a state fire marshal, any full-
2 time deputy fire marshal or any full-time assistant fire
3 marshal employed by the state fire marshal pursuant to
4 section eleven of this article, the State Fire Commission shall
5 award to the retiring member his or her service weapon,
6 without charge, upon determining:

7 (1) That the retiring member is retiring honorably with at
8 least twenty years of service; or

9 (2) The retiring member is retiring with less than twenty
10 years of service based upon a determination that the member
11 is totally physically disabled as a result of his or her service
12 with the state fire marshal.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, the State Fire Commission may not award a
15 service weapon to any member whom the State Fire
16 Commissioner finds to be mentally incapacitated or who
17 constitutes a danger to any person or the community.

18 (c) If a service weapon is taken out of service due to
19 routine wear, the fire marshal may offer the service weapon
20 for sale to any active or retired state fire marshal, assistant
21 state fire marshal or deputy state fire marshal, at fair market
22 value, with the proceeds from any sales used to offset the cost
23 of new service weapons. The disposal of service weapons
24 pursuant to this subsection does not fall within the
25 jurisdiction of the Purchasing Division of the Department of
26 Administration.

CHAPTER 196

(H.B. 4512 - By Delegates Morgan, Martin, Argento and Rowan)

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 13, 2008.]

AN ACT to amend and reenact §29-3D-2 of the Code of West Virginia, 1931, as amended, relating to providing classifications of licensees to be licensed by the State Fire Marshal to engage in fire protection work.

Be it enacted by the Legislature of West Virginia:

That §29-3D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§29-3D-2. Definitions.

1 As used in this article:

2 (a) “Engineered Suppression Systems Installer” means a
3 person certified by a manufacturer to install, alter, extend,
4 maintain, layout or repair an agent suppression system.

5 (b) “Engineered Suppression Systems Technician” means
6 a person certified by a manufacturer to maintain or repair an
7 agent suppression system.

8 (c) "Fire protection layout technician" is an individual
9 who has achieved National Institute for Certification in
10 Engineering Technologies (NICET) Level III or higher
11 certification, and who has the knowledge, experience and

12 skills necessary to layout fire protection systems based on
13 engineering design documents.

14 (d) "Fire protection system" means any fire protection
15 suppression device or system designed, installed and
16 maintained in accordance with the applicable National Fire
17 Protection Association (NFPA) codes and standards, but does
18 not include public or private mobile fire vehicles.

19 (e) "Fire protection work" means the installation,
20 alteration, extension, maintenance, or testing of all piping,
21 materials and equipment inside a building, including the use
22 of shop drawings prepared by a fire protection layout
23 technician, in connection with the discharge of water, other
24 special fluids, chemicals or gases and backflow preventers
25 for fire protection for the express purpose of extinguishing or
26 controlling fire.

27 (f) "Journeyman sprinkler fitter" means a person qualified
28 by at least ten thousand hours of work experience installing,
29 adjusting, repairing and dismantling fire protection systems
30 and who is competent to instruct and supervise the fire
31 protection work of a sprinkler fitter in training.

32 (g) "License" means a valid and current license issued by
33 the State Fire Marshal in accordance with the provisions of
34 this article.

35 (h) "Portable Fire Extinguisher Technician" means a
36 person certified in accordance with NFPA 10 to install,
37 maintain, repair and certify portable fire extinguishers as
38 defined by NFPA 10.

39 (i) "Preengineered Suppression Systems Installer" means
40 a person certified by a manufacturer to install, alter, extend,
41 maintain, layout or repair an agent suppression system.

42 (j) "Preengineered Suppression Systems Technician"
43 means a person certified to maintain or repair an agent
44 suppression system.

45 (k) "Sprinkler fitter in training" means a person with
46 interest in and an aptitude for performing fire protection work
47 but who alone is not capable of performing such work, and
48 who has fewer than ten thousand hours of experience
49 installing, adjusting, repairing and dismantling fire protection
50 systems.



CHAPTER 197

**(H.B. 4677 - By Delegates White, Stalnaker, Kominar, Iaquina
and Argento)**

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 12, 2008.]

AN ACT to amend and reenact §6-7-2a and §29-6-7 of the Code of West Virginia, 1931, as amended, all relating to the Director of Personnel; clarifying appointment of director; and authorizing that the hiring requirement is education or experience.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a and §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

Chapter

- 6. General Provisions Respecting Officers.**
- 29. Miscellaneous Boards and Commissions.**

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 7. COMPENSATION AND ALLOWANCES.

***§6-7-2a. Terms of certain appointive state officers;
appointment; qualifications; powers and salaries
of such officers.**

1 (a) Each of the following appointive state officers named
2 in this subsection shall be appointed by the Governor, by and
3 with the advice and consent of the Senate. Each of the
4 appointive state officers serves at the will and pleasure of the
5 Governor for the term for which the Governor was elected
6 and until the respective state officers' successors have been
7 appointed and qualified. Each of the appointive state officers
8 are subject to the existing qualifications for holding each
9 respective office and each has and is hereby granted all of the
10 powers and authority and shall perform all of the functions
11 and services heretofore vested in and performed by virtue of
12 existing law respecting each office.

13 Prior to the first day of July, two thousand six, each such
14 named appointive state officer shall continue to receive the
15 annual salaries they were receiving as of the effective date of
16 the enactment of this section in two thousand six, and
17 thereafter, notwithstanding any other provision of this code
18 to the contrary, the annual salary of each named appointive
19 state officer shall be as follows:

20 Commissioner, Division of Highways, ninety-two
21 thousand five hundred dollars; Commissioner, Division of
22 Corrections, eighty thousand dollars; Director, Division of

*CLERK'S NOTE: This section was also amended by SB 309 (Chapter 198),
which passed subsequent to this act.

23 Natural Resources, seventy-five thousand dollars;
24 Superintendent, State Police, eighty-five thousand dollars;
25 Commissioner, Division of Banking, seventy-five thousand
26 dollars; Commissioner, Division of Culture and History,
27 sixty-five thousand dollars; Commissioner, Alcohol Beverage
28 Control Commission, seventy-five thousand dollars;
29 Commissioner, Division of Motor Vehicles, seventy-five
30 thousand dollars; Chairman, Health Care Authority, eighty
31 thousand dollars; members, Health Care Authority, seventy
32 thousand dollars; Director, Human Rights Commission, fifty-
33 five thousand dollars; Commissioner, Division of Labor,
34 seventy thousand dollars; Director, Division of Veterans'
35 Affairs, sixty-five thousand dollars; Chairperson, Board of
36 Parole, fifty-five thousand dollars; members, Board of Parole,
37 fifty thousand dollars; members, Employment Security
38 Review Board, seventeen thousand dollars; and
39 Commissioner, Bureau of Employment Programs, seventy-
40 five thousand dollars. Secretaries of the departments shall be
41 paid an annual salary as follows: Health and Human
42 Resources, ninety-five thousand dollars; Transportation,
43 ninety-five thousand dollars; Revenue, ninety-five thousand
44 dollars; Military Affairs and Public Safety, ninety-five
45 thousand dollars; Administration, ninety-five thousand
46 dollars; Education and the Arts, ninety-five thousand dollars;
47 Commerce, ninety-five thousand dollars; and Environmental
48 Protection, ninety-five thousand dollars: *Provided*, That any
49 increase in the salary of any current appointive state officer
50 named in this subsection pursuant to the reenactment of this
51 subsection during the regular session of the Legislature in
52 two thousand six that exceeds five thousand dollars shall be
53 paid to such officer or his or her successor beginning on the
54 first day of July, two thousand six, in annual increments of
55 five thousand dollars per fiscal year, up to the maximum
56 salary provided in this subsection.

57 (b) Each of the state officers named in this subsection
58 shall continue to be appointed in the manner prescribed in
59 this code and, prior to the first day of July, two thousand six,

60 each of the state officers named in this subsection shall
61 continue to receive the annual salaries he or she was
62 receiving as of the effective date of the enactment of this
63 section in two thousand six, and shall thereafter,
64 notwithstanding any other provision of this code to the
65 contrary, be paid an annual salary as follows:

66 Director, Board of Risk and Insurance Management,
67 eighty thousand dollars; Director, Division of Rehabilitation
68 Services, seventy thousand dollars; Director, Division of
69 Personnel, seventy thousand dollars; Executive Director,
70 Educational Broadcasting Authority, seventy-five thousand
71 dollars; Secretary, Library Commission, seventy-two
72 thousand dollars; Director, Geological and Economic Survey,
73 seventy-five thousand dollars; Executive Director,
74 Prosecuting Attorneys Institute, seventy thousand dollars;
75 Executive Director, Public Defender Services, seventy
76 thousand dollars; Commissioner, Bureau of Senior Services,
77 seventy-five thousand dollars; Director, State Rail Authority,
78 sixty-five thousand dollars; Executive Director, Women's
79 Commission, forty-five thousand dollars; Director, Hospital
80 Finance Authority, thirty-five thousand dollars; member,
81 Racing Commission, twelve thousand dollars; Chairman,
82 Public Service Commission, eighty-five thousand dollars;
83 members, Public Service Commission, eighty-five thousand
84 dollars; Director, Division of Forestry, seventy-five thousand
85 dollars; Director, Division of Juvenile Services, eighty
86 thousand dollars; and Executive Director, Regional Jail and
87 Correctional Facility Authority, eighty thousand dollars:
88 *Provided*, That any increase in the salary of any current
89 appointive state officer named in this subsection pursuant to
90 the reenactment of this subsection during the regular session
91 of the Legislature in two thousand six that exceeds five
92 thousand dollars shall be paid to such officer or his or her
93 successor beginning on the first day of July, two thousand
94 six, in annual increments of five thousand dollars per fiscal
95 year, up to the maximum salary provided in this subsection.

96 (c) Each of the following appointive state officers named
97 in this subsection shall be appointed by the Governor, by and
98 with the advice and consent of the Senate. Each of the
99 appointive state officers serves at the will and pleasure of the
100 Governor for the term for which the Governor was elected
101 and until the respective state officers' successors have been
102 appointed and qualified. Each of the appointive state officers
103 are subject to the existing qualifications for holding each
104 respective office and each has and is hereby granted all of the
105 powers and authority and shall perform all of the functions
106 and services heretofore vested in and performed by virtue of
107 existing law respecting each office.

108 Prior to the first day of July, two thousand six, each such
109 named appointive state officer shall continue to receive the
110 annual salaries they were receiving as of the effective date of
111 the enactment of this section in two thousand six, and
112 thereafter, notwithstanding any other provision of this code
113 to the contrary, the annual salary of each named appointive
114 state officer shall be as follows:

115 Commissioner, State Tax Division, ninety-two thousand
116 five hundred dollars; Commissioner, Insurance Commission,
117 ninety-two thousand five hundred dollars; Director, Lottery
118 Commission, ninety-two thousand five hundred dollars;
119 Director, Division of Homeland Security and Emergency
120 Management, sixty-five thousand dollars; and Adjutant
121 General, ninety-two thousand five hundred dollars;

122 (d) No increase in the salary of any appointive state
123 officer pursuant to this section shall be paid until and unless
124 the appointive state officer has first filed with the State
125 Auditor and the Legislative Auditor a sworn statement, on a
126 form to be prescribed by the Attorney General, certifying that
127 his or her spending unit is in compliance with any general
128 law providing for a salary increase for his or her employees.
129 The Attorney General shall prepare and distribute the form to
130 the affected spending units.

**CHAPTER 29. MISCELLANEOUS BOARDS
AND COMMISSIONS.**

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

1 (a) The Secretary of the Department of Administration
2 shall appoint the director. The director shall be a person
3 knowledgeable of the application of the merit principles in
4 public employment as evidenced by the obtainment of a
5 degree in business administration, personnel administration,
6 public administration or the equivalent or at least five years
7 of administrative experience in personnel administration.
8 The salary for the director shall be that which is set out in
9 section two-a, article seven, chapter six of this code.

10 (b) The director shall:

11 (1) Consistent with the provisions of this article,
12 administer the operations of the division, allocating the
13 functions and activities of the division among sections as the
14 director may establish;

15 (2) Maintain a personnel management information system
16 necessary to carry out the provisions of this article;

17 (3) Supervise payrolls and audit payrolls, reports or
18 transactions for conformity with the provisions of this article;

19 (4) Plan, evaluate, administer and implement personnel
20 programs and policies in state government and to political
21 subdivisions after agreement by the parties;

22 (5) Supervise the employee selection process and employ
23 performance evaluation procedures;

24 (6) Develop programs to improve efficiency and
25 effectiveness of the public service, including, but not limited
26 to, employee training, development, assistance and
27 incentives, which, notwithstanding any provision of this code
28 to the contrary, may include a one-time monetary incentive
29 for recruitment and retention of employees in critically
30 understaffed classifications. The director, in consultation
31 with the board, shall determine which classifications are
32 critically understaffed. The one-time monetary incentive
33 program shall continue until the thirtieth day of June, two
34 thousand nine. The director shall report annually on or
35 before the thirty-first day of December, commencing in the
36 year two thousand seven, to the Joint Committee on
37 Government and Finance. The annual report shall provide all
38 relevant information on the one-time monetary incentive
39 program and the understaffed classifications in state
40 agencies;

41 (7) Establish pilot programs and other projects for a
42 maximum of one year outside of the provisions of this article,
43 subject to approval by the board, to be included in the annual
44 report;

45 (8) Establish and provide for a public employee
46 interchange program and may provide for a voluntary
47 employee interchange program between public and private
48 sector employees;

49 (9) Establish an internship program;

50 (10) Assist the Governor and Secretary of the Department
51 of Administration in general workforce planning and other
52 personnel matters;

53 (11) Make an annual report to the Governor and
54 Legislature and all other special or periodic reports as may be
55 required;

56 (12) Assess cost for special or other services;

57 (13) Recommend rules to the board for implementation
58 of this article; and

59 (14) Conduct schools, seminars or classes for supervisory
60 employees of the state regarding handling of complaints and
61 disciplinary matters and the operation of the state personnel
62 system.



CHAPTER 198

**(Com. Sub. for S.B. 309 - By Senators Bowman, Plymale,
Oliverio and Sypolt)**

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to the terms of certain appointed state officers; qualifications; powers and salaries of such officers; and clarifying salary when one person is serving as both the Secretary of Transportation and the Commissioner of Highways.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

***§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.**

1 (a) Each of the following appointive state officers named
2 in this subsection shall be appointed by the Governor, by and
3 with the advice and consent of the Senate. Each of the
4 appointive state officers serves at the will and pleasure of the
5 Governor for the term for which the Governor was elected
6 and until the respective state officers' successors have been
7 appointed and qualified. Each of the appointive state officers
8 are subject to the existing qualifications for holding each
9 respective office and each has and is hereby granted all of the
10 powers and authority and shall perform all of the functions
11 and services heretofore vested in and performed by virtue of
12 existing law respecting each office.

13 Prior to the first day of July, two thousand six, each such
14 named appointive state officer shall continue to receive the
15 annual salaries they were receiving as of the effective date of
16 the enactment of this section in two thousand six and
17 thereafter, notwithstanding any other provision of this code
18 to the contrary, the annual salary of each named appointive
19 state officer shall be as follows:

20 Commissioner, Division of Highways, ninety-two
21 thousand five hundred dollars; Commissioner, Division of
22 Corrections, eighty thousand dollars; Director, Division of
23 Natural Resources, seventy-five thousand dollars;
24 Superintendent, State Police, eighty-five thousand dollars;
25 Commissioner, Division of Banking, seventy-five thousand
26 dollars; Commissioner, Division of Culture and History,
27 sixty-five thousand dollars; Commissioner, Alcohol Beverage
28 Control Commission, seventy-five thousand dollars;

*CLERK'S NOTE: This section was also amended by HB 4677 (Chapter 197), which passed prior to this act.

29 Commissioner, Division of Motor Vehicles, seventy-five
30 thousand dollars; Chairman, Health Care Authority, eighty
31 thousand dollars; members, Health Care Authority, seventy
32 thousand dollars; Director, Human Rights Commission,
33 fifty-five thousand dollars; Commissioner, Division of Labor,
34 seventy thousand dollars; Director, Division of Veterans'
35 Affairs, sixty-five thousand dollars; Chairperson, Board of
36 Parole, fifty-five thousand dollars; members, Board of Parole,
37 fifty thousand dollars; members, Employment Security
38 Review Board, seventeen thousand dollars; and
39 Commissioner, Bureau of Employment Programs,
40 seventy-five thousand dollars. Secretaries of the departments
41 shall be paid an annual salary as follows: Health and Human
42 Resources, ninety-five thousand dollars; Transportation,
43 ninety-five thousand dollars: *Provided*, That if the same
44 person is serving as both the Secretary of Transportation and
45 the Commissioner of Highways, he or she shall be paid one
46 hundred twenty thousand dollars; Revenue, ninety-five
47 thousand dollars; Military Affairs and Public Safety,
48 ninety-five thousand dollars; Administration, ninety-five
49 thousand dollars; Education and the Arts, ninety-five
50 thousand dollars; Commerce, ninety-five thousand dollars;
51 and Environmental Protection, ninety-five thousand dollars:
52 *Provided, however*, That any increase in the salary of any
53 current appointive state officer named in this subsection
54 pursuant to the reenactment of this subsection during the
55 regular session of the Legislature in two thousand six that
56 exceeds five thousand dollars shall be paid to such officer or
57 his or her successor beginning on the first day of July, two
58 thousand six, in annual increments of five thousand dollars
59 per fiscal year, up to the maximum salary provided in this
60 subsection: *Provided further*, That if the same person is
61 serving as both the Secretary of Transportation and the
62 Commissioner of Highways, then the annual increments of
63 five thousand dollars per fiscal year do not apply.

64 (b) Each of the state officers named in this subsection
65 shall continue to be appointed in the manner prescribed in

66 this code and, prior to the first day of July, two thousand six,
67 each of the state officers named in this subsection shall
68 continue to receive the annual salaries he or she was
69 receiving as of the effective date of the enactment of this
70 section in two thousand six and shall thereafter,
71 notwithstanding any other provision of this code to the
72 contrary, be paid an annual salary as follows:

73 Director, Board of Risk and Insurance Management,
74 eighty thousand dollars; Director, Division of Rehabilitation
75 Services, seventy thousand dollars; Director, Division of
76 Personnel, seventy thousand dollars; Executive Director,
77 Educational Broadcasting Authority, seventy-five thousand
78 dollars; Secretary, Library Commission, seventy-two
79 thousand dollars; Director, Geological and Economic Survey,
80 seventy-five thousand dollars; Executive Director,
81 Prosecuting Attorneys Institute, seventy thousand dollars;
82 Executive Director, Public Defender Services, seventy
83 thousand dollars; Commissioner, Bureau of Senior Services,
84 seventy-five thousand dollars; Director, State Rail Authority,
85 sixty-five thousand dollars; Executive Director, Women's
86 Commission, forty-five thousand dollars; Director, Hospital
87 Finance Authority, thirty-five thousand dollars; member,
88 Racing Commission, twelve thousand dollars; Chairman,
89 Public Service Commission, eighty-five thousand dollars;
90 members, Public Service Commission, eighty-five thousand
91 dollars; Director, Division of Forestry, seventy-five thousand
92 dollars; Director, Division of Juvenile Services, eighty
93 thousand dollars; and Executive Director, Regional Jail and
94 Correctional Facility Authority, eighty thousand dollars:
95 *Provided*, That any increase in the salary of any current
96 appointive state officer named in this subsection pursuant to
97 the reenactment of this subsection during the regular session
98 of the Legislature in two thousand six that exceeds five
99 thousand dollars shall be paid to such officer or his or her
100 successor beginning on the first day of July, two thousand
101 six, in annual increments of five thousand dollars per fiscal
102 year, up to the maximum salary provided in this subsection.

103 (c) Each of the following appointive state officers named
104 in this subsection shall be appointed by the Governor, by and
105 with the advice and consent of the Senate. Each of the
106 appointive state officers serves at the will and pleasure of the
107 Governor for the term for which the Governor was elected
108 and until the respective state officers' successors have been
109 appointed and qualified. Each of the appointive state officers
110 are subject to the existing qualifications for holding each
111 respective office and each has and is hereby granted all of the
112 powers and authority and shall perform all of the functions
113 and services heretofore vested in and performed by virtue of
114 existing law respecting each office.

115 Prior to the first day of July, two thousand six, each such
116 named appointive state officer shall continue to receive the
117 annual salaries they were receiving as of the effective date of
118 the enactment of this section in two thousand six and
119 thereafter, notwithstanding any other provision of this code
120 to the contrary, the annual salary of each named appointive
121 state officer shall be as follows:

122 Commissioner, State Tax Division, ninety-two thousand
123 five hundred dollars; Commissioner, Insurance Commission,
124 ninety-two thousand five hundred dollars; Director, Lottery
125 Commission, ninety-two thousand five hundred dollars;
126 Director, Division of Homeland Security and Emergency
127 Management, sixty-five thousand dollars; and Adjutant
128 General, ninety-two thousand five hundred dollars.

129 (d) No increase in the salary of any appointive state
130 officer pursuant to this section shall be paid until and unless
131 the appointive state officer has first filed with the State
132 Auditor and the Legislative Auditor a sworn statement, on a
133 form to be prescribed by the Attorney General, certifying that
134 his or her spending unit is in compliance with any general
135 law providing for a salary increase for his or her employees.
136 The Attorney General shall prepare and distribute the form to
137 the affected spending units.

CHAPTER 199

**(S.B. 574 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed March 7, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to the compensation of the membership of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 (a) The superintendent shall establish within the West
2 Virginia State Police a system to provide for: The promotion of
3 members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to the
6 ranks of trooper, senior trooper, trooper first class or corporal;
7 the classification of members assigned to the forensic laboratory
8 as criminalist I-VII; and the temporary reclassification of
9 members assigned to administrative duties as administrative
10 support specialist I-VIII.

11 (b) The superintendent may propose legislative rules for
 12 promulgation in accordance with article three, chapter
 13 twenty-nine-a of this code for the purpose of ensuring
 14 consistency, predictability and independent review of any
 15 system developed under the provisions of this section.

16 (c) The superintendent shall provide to each member a
 17 written manual governing any system established under the
 18 provisions of this section and specific procedures shall be
 19 identified for the evaluation and testing of members for
 20 promotion or reclassification and the subsequent placement
 21 of any members on a promotional eligibility or
 22 reclassification recommendation list.

23 (d) Beginning on the first day of July, two thousand
 24 seven, until and including the thirtieth day of June, two
 25 thousand eight, members shall receive annual salaries as
 26 follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)
 SUPERVISORY AND NONSUPERVISORY RANKS**

1	Cadet During Training	2,550.50 Mo.	\$30,606
2	Cadet Trooper After Training	3,138.17 Mo.	37,658
3	Trooper Second Year		39,122
4	Trooper Third Year		39,494
5	Senior Trooper		39,882
6	Trooper First Class		40,470
7	Corporal		41,058
8	Sergeant		45,234
9	First Sergeant		47,322

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10	Second Lieutenant	49,410
11	First Lieutenant	51,498
12	Captain	53,586
13	Major	55,674
14	Lieutenant Colonel	57,762

**ANNUAL SALARY SCHEDULE (BASE PAY)
ADMINISTRATION SUPPORT
SPECIALIST CLASSIFICATION**

1	I	\$39,494
2	II	39,882
3	III	40,470
4	IV	41,058
5	V	45,234
6	VI	47,322
7	VII	49,410
8	VIII	51,498

**ANNUAL SALARY SCHEDULE (BASE PAY)
CRIMINALIST CLASSIFICATION**

1	I	\$39,494
2	II	39,882
3	III	40,470
4	IV	41,058

5	V	45,244
6	VI	47,322
7	VII	49,410
8	VIII	51,498

9 Beginning on the first day of July, two thousand eight,
10 and continuing thereafter, members shall receive annual
11 salaries as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)
SUPERVISORY AND NONSUPERVISORY RANKS**

1	Cadet During Training	\$ 2,752 Mo.	\$ 33,024
2	Cadet Trooper After Training	3,357.33 Mo.	40,288
3	Trooper Second Year		41,296
4	Trooper Third Year		41,679
5	Senior Trooper		42,078
6	Trooper First Class		42,684
7	Corporal		43,290
8	Sergeant		47,591
9	First Sergeant		49,742
10	Second Lieutenant		51,892
11	First Lieutenant		54,043
12	Captain		56,194
13	Major		58,344

14 Lieutenant Colonel 60,495

**ANNUAL SALARY SCHEDULE (BASE PAY)
ADMINISTRATION SUPPORT
SPECIALIST CLASSIFICATION**

1	I	.....	\$ 41,679
2	II	.....	42,078
3	III	.....	42,684
4	IV	.....	43,290
5	V	.....	47,591
6	VI	.....	49,742
7	VII	.....	51,892
8	VIII	.....	54,043

**ANNUAL SALARY SCHEDULE (BASE PAY)
CRIMINALIST CLASSIFICATION**

1	I	.....	\$ 41,679
2	II	.....	42,078
3	III	.....	42,684
4	IV	.....	43,290
5	V	.....	47,591
6	VI	.....	49,742
7	VII	.....	51,892

8 VIII 54,043

9 Each member of the West Virginia State Police whose
10 salary is fixed and specified in this annual salary schedule is
11 entitled to the length of service increases set forth in
12 subsection (e) of this section and supplemental pay as
13 provided in subsection (g) of this section.

14 (e) Each member of the West Virginia State Police whose
15 salary is fixed and specified pursuant to this section shall
16 receive, and is entitled to, an increase in salary over that set
17 forth in subsection (d) of this section for grade in rank, based
18 on length of service, including that service served before and
19 after the effective date of this section with the West Virginia
20 State Police as follows: At the end of two years of service
21 with the West Virginia State Police, the member shall receive
22 a salary increase of four hundred dollars to be effective
23 during his or her next year of service and a like increase at
24 yearly intervals thereafter, with the increases to be
25 cumulative.

26 (f) In applying the salary schedules set forth in this
27 section where salary increases are provided for length of
28 service, members of the West Virginia State Police in service
29 at the time the schedules become effective shall be given
30 credit for prior service and shall be paid the salaries the same
31 length of service entitles them to receive under the provisions
32 of this section.

33 (g) The Legislature finds and declares that because of the
34 unique duties of members of the West Virginia State Police,
35 it is not appropriate to apply the provisions of state wage and
36 hour laws to them. Accordingly, members of the West
37 Virginia State Police are excluded from the provisions of
38 state wage and hour law. This express exclusion shall not be
39 construed as any indication that the members were or were
40 not covered by the wage and hour law prior to this exclusion.

41 In lieu of any overtime pay they might otherwise have
42 received under the wage and hour law, and in addition to
43 their salaries and increases for length of service, members
44 who have completed basic training and who are exempt from
45 federal Fair Labor Standards Act guidelines may receive
46 supplemental pay as provided in this section.

47 The authority of the superintendent to propose a
48 legislative rule or amendment thereto for promulgation in
49 accordance with article three, chapter twenty-nine-a of this
50 code to establish the number of hours per month which
51 constitute the standard work month for the members of the
52 West Virginia State Police is hereby continued. The rule
53 shall further establish, on a graduated hourly basis, the
54 criteria for receipt of a portion or all of supplemental
55 payment when hours are worked in excess of the standard
56 work month. The superintendent shall certify monthly to the
57 West Virginia State Police's payroll officer the names of
58 those members who have worked in excess of the standard
59 work month and the amount of their entitlement to
60 supplemental payment. The supplemental payment may not
61 exceed two hundred thirty-six dollars monthly. The
62 superintendent and civilian employees of the West Virginia
63 State Police are not eligible for any supplemental payments.

64 (h) Each member of the West Virginia State Police,
65 except the superintendent and civilian employees, shall
66 execute, before entering upon the discharge of his or her
67 duties, a bond with security in the sum of five thousand
68 dollars payable to the State of West Virginia, conditioned
69 upon the faithful performance of his or her duties, and the
70 bond shall be approved as to form by the Attorney General
71 and as to sufficiency by the Governor.

72 (i) In consideration for compensation paid by the West
73 Virginia State Police to its members during those members'
74 participation in the West Virginia State Police Cadet Training
75 Program pursuant to section eight, article twenty-nine,
76 chapter thirty of this code, the West Virginia State Police

77 may require of its members by written agreement entered into
78 with each of them in advance of such participation in the
79 program that, if a member should voluntarily discontinue
80 employment any time within one year immediately following
81 completion of the training program, he or she shall be
82 obligated to pay to the West Virginia State Police a pro rata
83 portion of such compensation equal to that part of such year
84 which the member has chosen not to remain in the employ of
85 the West Virginia State Police.

86 (j) Any member of the West Virginia State Police who is
87 called to perform active duty training or inactive duty
88 training in the National Guard or any reserve component of
89 the armed forces of the United States annually shall be
90 granted, upon request, leave time not to exceed thirty
91 calendar days for the purpose of performing the active duty
92 training or inactive duty training and the time granted may
93 not be deducted from any leave accumulated as a member of
94 the West Virginia State Police.



CHAPTER 200

**(S.B. 271 - By Senators Kessler, Oliverio, Chafin, Foster, Green,
Hunter, Jenkins, Minard, Stollings, Wells, Barnes, Deem, Hall,
McKenzie and Yoder)**

[Passed March 5, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §15-2-6 of the Code of West Virginia, 1931, as amended, relating to grievance appeal recommendation board; providing rule-making authority; and establishing grievance procedure for state police.

Be it enacted by the Legislature of West Virginia:

That §15-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-6. Authority to make rules for grievance procedure.

1 The superintendent shall have continuing authority to
2 propose legislative rules for promulgation in accordance with
3 the provisions of article three, chapter twenty-nine-a of this
4 code, relating to a grievance procedure for sworn members of
5 the State Police. At a minimum, the rule shall provide a
6 process for filing and resolving grievances at the lowest
7 possible level in a timely manner, providing for
8 representation, taking evidence at each level, establishing a
9 hearing procedure, providing for appellate review, allocating
10 costs and authorizing attorney fees to a grievant who prevails
11 on appeal.



CHAPTER 201

**(Com. Sub. for H.B. 4471 - By Delegates Spencer, DeLong,
Caputo, Perry, Boggs, Stemple and Crosier)**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24b; and to amend and reenact §15-2A-2, §15-2A-3, §15-2A-4, §15-2A-5, §15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-11a, §15-2A-11b, §15-2A-12, §15-2A-13, §15-2A-14, §15-2A-15, §15-2A-17 and §15-2A-19 of said code, all relating to the West

Virginia State Police Retirement Fund; requiring the State Police to collect a fee for certain fingerprinting services and deposit the fees into the retirement system; adding, deleting and modifying definitions; specifying the title of West Virginia State Police Retirement System; clarifying the usage of the terms “employee”, “member” and “retirant or retiree” as defined; clarifying the usage of the terms “fund”, “plan”, “system” or “retirement system” as defined; clarifying the usage of the term “base salary” as defined; clarifying the usage of the term “agency” as defined; authorizing the board to increase or decrease the employee’s contribution rate under specified circumstances; reducing the normal retirement age for members; eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan; allowing distributions totaling less than two hundred dollars within the definition of “eligible rollover distribution”; clarifying the usage of the term “surviving spouse” as defined; clarifying surviving spouse payments when calculating the pro rata share of annuity adjustments; specifying the time frame that a retirant may receive deferred annuity payments; clarifying the age requirement for a retirant receiving a duty disability annuity; requiring the base salary of a member receiving a duty disability annuity to be annualized until the member has worked twelve months; specifying the title of the West Virginia Insurance Commission; clarifying the time frame for which a duty disability retirant receives a retirement benefit; specifying that disability petitions certify the job description of an employee applying for a disability retirement; specifying the time frame for receipt of awards and benefits to dependents of deceased employees; clarifying that death awards and benefits be calculated for the last full twelve-month employment period; requiring that death awards and benefits be paid to a named beneficiary or to the estate of the deceased member if there is no surviving spouse or dependents; eliminating duplicate language referring to a single receipt of state retirement benefits; and adding provisions specifying the time frame for receipt of beneficiary payments.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2-24b; and that §15-2A-2, §15-2A-3, §15-2A-4, §15-2A-5, §15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-11a, §15-2A-11b, §15-2A-12, §15-2A-13, §15-2A-14, §15-2A-15, §15-2A-17 and §15-2A-19 of said code be amended and reenacted, all to read as follows:

Article

2. West Virginia State Police.

2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24b. Fees for certain fingerprinting services; dedication of fees.

1 In addition to any fees that may be established or
2 collected by the State Police under any other provision of this
3 article or rule promulgated pursuant thereto, the State Police
4 shall collect a fee of twenty dollars for performing adult
5 private employment fingerprinting or fingerprinting for
6 federal firearm permits: *Provided*, That all state entities are
7 exempt from the fee. Fees collected pursuant to this section
8 shall be deposited into the West Virginia State Police
9 Retirement System and shall be in addition to employer
10 percent-of-payroll contribution.

**ARTICLE 2A. WEST VIRGINIA STATE POLICE
RETIREMENT SYSTEM.**

§15-2A-2. Definitions.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

§15-2A-4. Participation in system; continuation of fund.

§15-2A-5. Employee contributions; employer contributions; forfeitures.

§15-2A-6. Retirement; commencement of benefits.

§15-2A-6a. Federal law maximum benefit limitations.

§15-2A-6c. Direct rollovers.

- §15-2A-6d. Rollovers and transfer to purchase service credit or repay withdrawn contributions.
- §15-2A-7. Annual annuity adjustment.
- §15-2A-8. Refunds to certain members upon discharge of resignation; deferred retirement.
- §15-2A-9. Awards and benefits for disability – Incurred in performance of duty.
- §15-2A-10. Same – Due to other causes.
- §15-2A-11. Same – Physical examinations; termination.
- §15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.
- §15-2A-11b. Annual report on each employer’s disability retirement experience.
- §15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.
- §15-2A-13. Same – When member dies from nonservice-connected causes before serving twenty years.
- §15-2A-14. Awards and benefits to dependents of member -- When member dies after retirement or after serving twenty years.
- §15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.
- §15-2A-17. Awards and benefits to dependents of member – Termination.
- §15-2A-19. 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.

§15-2A-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) “Accumulated contributions” means the sum of all
4 amounts deducted from base salary, together with four
5 percent interest compounded annually.

6 (2) "Active military duty" means full-time active duty
7 with the armed forces of the United States, namely, the
8 United States Air Force, Army, Coast Guard, Marines or
9 Navy; and service with the National Guard or reserve
10 military forces of any of the armed forces when the employee
11 has been called to active full-time duty.

12 (3) “Agency” means the West Virginia State Police.

13 (4) "Base salary" means compensation paid to an
14 employee without regard to any overtime pay.

15 (5) "Beneficiary" means a surviving spouse or other
16 surviving beneficiary who is entitled to, or will be entitled to,
17 an annuity or other benefit payable by the fund.

18 (6) "Board" means the Consolidated Public Retirement
19 Board created pursuant to article ten-d, chapter five of this
20 code.

21 (7) "Dependent child" means any unmarried child or
22 children born to or adopted by a member or retirant of the
23 fund who:

24 (A) Is under the age of eighteen;

25 (B) After reaching eighteen years of age, continues as a
26 full-time student in an accredited high school, college,
27 university, business or trade school until the child or children
28 reaches the age of twenty-three years; or

29 (C) Is financially dependent on the member or retirant by
30 virtue of a permanent mental or physical disability upon
31 evidence satisfactory to the board.

32 (8) "Dependent parent" means the member's or retirant's
33 parent or stepparent claimed as a dependent by the member
34 or retirant for federal income tax purposes at the time of the
35 member's or retirant's death.

36 (9) "Employee" means any person regularly employed in
37 the service of the agency as a law-enforcement officer after
38 the twelfth day of March, one thousand nine hundred ninety-
39 four, and who is eligible to participate in the fund.

40 (10) "Final average salary" means the average of the
41 highest annual compensation received for employment with
42 the agency, including compensation paid for overtime
43 service, received by the employee during any five calendar
44 years within the employee's last ten years of service.

45 (11) "Fund", "plan", "system" or "retirement system"
46 means the West Virginia State Police Retirement Fund
47 created and established by this article.

48 (12) "Internal Revenue Code" means the Internal
49 Revenue Code of 1986, as amended.

50 (13) "Law-enforcement officer" means an individual
51 employed or otherwise engaged in either a public or private
52 position which involves the rendition of services relating to
53 enforcement of federal, state or local laws for the protection
54 of public or private safety, including, but not limited to,
55 positions as deputy sheriffs, police officers, marshals,
56 bailiffs, court security officers or any other law-enforcement
57 position which requires certification, but excluding positions
58 held by elected sheriffs or appointed chiefs of police whose
59 duties are purely administrative in nature.

60 (14) "Member" means any person who has contributions
61 standing to his or her credit in the fund and who has not yet
62 entered into retirement status.

63 (15) "Month of service" means each month for which an
64 employee is paid or entitled to payment for at least one hour
65 of service for which contributions were remitted to the fund.
66 These months shall be credited to the member for the
67 calendar year in which the duties are performed.

68 (16) "Partially disabled" means an employee's inability,
69 on a probable permanent basis, to perform the essential duties
70 of a law-enforcement officer by reason of any medically
71 determinable physical or mental impairment which has lasted
72 or can be expected to last for a continuous period of not less
73 than twelve months, but which impairment does not preclude
74 the employee from engaging in other types of nonlaw-
75 enforcement employment.

76 (17) "Physical or mental impairment" means an
77 impairment that results from an anatomical, physiological or

78 psychological abnormality that is demonstrated by medically
79 accepted clinical and laboratory diagnostic techniques.

80 (18) "Plan year" means the twelve-month period
81 commencing on the first day of July of any designated year
82 and ending the following thirtieth day of June.

83 (19) "Required beginning date" means the first day of
84 April of the calendar year following the later of: (a) The
85 calendar year in which the member attains age seventy and
86 one-half years; or (b) the calendar year in which he or she
87 retires or otherwise separates from service with the agency
88 after having attained the age of seventy and one-half years.

89 (20) "Retirant" or "retiree" means any member who
90 commences an annuity payable by the retirement system.

91 (21) "Salary" means the compensation of an employee,
92 excluding any overtime payments.

93 (22) "Surviving spouse" means the person to whom the
94 member or retirant was legally married at the time of the
95 member's or retirant's death and who survived the member
96 or retirant.

97 (23) "Totally disabled" means an employee's probable
98 permanent inability to engage in substantial gainful activity
99 by reason of any medically determined physical or mental
100 impairment that can be expected to result in death or that has
101 lasted or can be expected to last for a continuous period of
102 not less than twelve months. For purposes of this
103 subdivision, an employee is totally disabled only if his or her
104 physical or mental impairments are so severe that he or she
105 is not only unable to perform his or her previous work as an
106 employee of the agency, but also cannot, considering his or
107 her age, education and work experience, engage in any other
108 kind of substantial gainful employment which exists in the
109 state regardless of whether: (A) The work exists in the

110 immediate area in which the employee lives; (B) a specific
111 job vacancy exists; or (C) the employee would be hired if he
112 or she applied for work.

113 (24) "Years of service" means the months of service
114 acquired by a member while in active employment with the
115 agency divided by twelve. Years of service shall be
116 calculated in years and fraction of a year from the date of
117 active employment of the member with the agency through
118 the date of termination of employment or retirement from the
119 agency. If a member returns to active employment with the
120 agency following a previous termination of employment with
121 the agency and the member has not received a refund of
122 contributions plus interest for the previous employment under
123 section eight of this article, service shall be calculated
124 separately for each period of continuous employment and
125 years of service shall be the total service for all periods of
126 employment. Years of service shall exclude any periods of
127 employment with the agency for which a refund of
128 contributions plus interest has been paid to the member
129 unless the employee repays the previous withdrawal, as
130 provided in section eight of this article, to reinstate the years
131 of service.

**§15-2A-3. Continuation and administration of West Virginia
State Police Retirement System; leased
employees; federal qualification requirements.**

1 (a) The West Virginia State Police Retirement System is
2 continued. Any West Virginia state trooper employed by the
3 agency on or after the effective date of this article shall be a
4 member of this retirement system and may not qualify for
5 membership in any other retirement system administered by
6 the board so long as he or she remains employed by the State
7 Police.

8 (b) Any individual who is a leased employee shall not be
9 eligible to participate in the system. For purposes of this

10 system, a "leased employee" means any individual who
11 performs services as an independent contractor or pursuant to
12 an agreement with an employee leasing organization or other
13 similar organization. If a question arises regarding the status
14 of an individual as a leased employee, the board has final
15 power to decide the question.

16 (c) The board created pursuant to article ten-d, chapter
17 five of this code shall administer the retirement system. The
18 board may sue and be sued, contract and be contracted with
19 and conduct all the business of the system in the name of the
20 West Virginia State Police Retirement System.

21 (d) This fund is intended to meet the federal qualification
22 requirements of Section 401(a) and related sections of the
23 Internal Revenue Code as applicable to governmental plans.
24 Notwithstanding any other provision of state law, the board
25 shall administer the retirement system to fulfill this intent for
26 the exclusive benefit of the employees, members, retirants
27 and their beneficiaries. Any provision of this article
28 referencing or relating to these federal qualification
29 requirements shall be effective as of the date required by
30 federal law. The board may promulgate rules and amend or
31 repeal conflicting rules in accordance with the authority
32 granted to the board pursuant to section one, article ten-d,
33 chapter five of this code to assure compliance with this
34 section.

§15-2A-4. Participation in system; continuation of fund.

1 The West Virginia State Police Retirement Fund is
2 continued for the benefit of the members and retirants of the
3 system created pursuant to this article and the dependents of
4 any deceased or retired member of the system. All moneys
5 paid into and accumulated in the fund, except any amounts
6 designated or set aside by the board for payments of benefits
7 as provided in this article, shall be invested by the West
8 Virginia Investment Management Board as provided by law.

§15-2A-5. Employee contributions; employer contributions; forfeitures.

1 (a) There shall be deducted from the monthly payroll of
2 each employee and paid into the fund created pursuant to
3 section four of this article twelve percent of the amount of his
4 or her salary: *Provided*, That after the first day of July, two
5 thousand eight, if the unfunded liability of the fund falls
6 below the ninety percent threshold, then the employee rate of
7 contribution shall be increased to thirteen percent of the
8 amount of the employee's salary until the ninety percent or
9 better funding level is again achieved. Once that funding
10 level is achieved the employee contribution rate will be
11 reduced to twelve percent.

12 (b) The State of West Virginia's contributions to the
13 retirement system, as determined by the board by legislative
14 rule promulgated in accordance with the provisions of article
15 three, chapter twenty-nine-a of this code, shall be a percent
16 of the employees' total annual base salary related to benefits
17 under this retirement system. In determining the amount, the
18 board shall give consideration to setting the amount at a sum
19 equal to an amount which, if paid annually by the state, will
20 be sufficient to provide for the total normal cost of the
21 benefits expected to become payable to all members and
22 retirants and to amortize any unfunded liability found by
23 application of the actuarial funding method chosen for that
24 purpose by the board over a period of years determined
25 actuarially appropriate. When proposing a rule for
26 promulgation which relates to the amount of employer
27 contribution, the board may promulgate emergency rules
28 pursuant to the provisions of article three, chapter
29 twenty-nine-a of this code if the inability of the board to
30 increase state contributions will detrimentally affect the
31 actuarial soundness of the retirement system. A signed
32 statement from the state actuary shall accompany the
33 statement of facts and circumstances constituting an
34 emergency which shall be filed in the State Register. For

35 purposes of this section, subdivision (2), subsection (b),
36 section fifteen-a, article three, chapter twenty-nine-a of this
37 code is not applicable to the Secretary of State's
38 determination of whether an emergency rule should be
39 approved. The state's contributions shall be paid monthly
40 into the fund created pursuant to section four of this article
41 out of the annual appropriation for the agency.

42 (c) Notwithstanding any other provisions of this article,
43 forfeitures under the system shall not be applied to increase
44 the benefits any member or retirant would otherwise receive
45 under the system.

§15-2A-6. Retirement; commencement of benefits.

1 (a) A member may retire with full benefits upon attaining
2 the age of fifty and completing twenty-five or more years of
3 service or attaining the age of fifty-two and completing
4 twenty years or more of service by filing with the board his
5 or her voluntary application in writing for retirement. A
6 member who is less than age fifty-two may retire upon
7 completing twenty years or more of service: *Provided*, That
8 he or she will receive a reduced benefit that is of equal
9 actuarial value to the benefit the member would have
10 received if the member deferred commencement of his or her
11 accrued retirement benefit to the age of fifty-two.

12 (b) When the board retires a member with full benefits
13 under the provisions of this section, the board, by order in
14 writing, shall make a determination that the member is
15 entitled to receive an annuity equal to two and three-fourths
16 percent of his or her final average salary multiplied by the
17 number of years, and fraction of a year, of his or her service
18 at the time of retirement. The retirant's annuity shall begin
19 the first day of the calendar month following the month in
20 which the member's application for the annuity is filed with
21 the board on or after his or her attaining age and service
22 requirements and termination of employment.

23 (c) In no event may the provisions of section thirteen,
24 article sixteen, chapter five of this code be applied in
25 determining eligibility to retire with either a deferred or
26 immediate commencement of benefit.

§15-2A-6a. 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 Treasury regulations under that section to
5 the extent applicable to governmental plans so that no
6 annuity or other benefit provided under this system shall
7 exceed those limitations. The extent to which any annuity or
8 other benefit payable under this retirement system shall be
9 reduced as compared with the extent to which an annuity,
10 contributions or other benefits under any other defined
11 benefit plans or defined contribution plans required to be
12 taken into consideration under Section 415 of the Internal
13 Revenue Code shall be determined by the board in a manner
14 that shall maximize the aggregate benefits payable to the
15 member. If the reduction is under this retirement system, the
16 board shall advise affected members or retirants of any
17 additional limitation on the annuities required by this section.

§15-2A-6c. 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 system, a distributee may elect, at the time and in
6 the manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 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: (i) 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; (ii) any distribution to the extent the distribution is
21 required under Section 401(a)(9) of the Internal Revenue
22 Code; (iii) 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; and (iv) any hardship distribution
26 described in Section 401(k)(2)(B)(i)(iv) of the Internal
27 Revenue Code. For distributions after the thirty-first day of
28 December, two thousand one, a portion of a distribution shall
29 not fail to be an eligible rollover distribution merely because
30 the portion consists of after-tax employee contributions
31 which are not includable in gross income. However, this
32 portion may be paid only to an individual retirement account
33 or annuity described in Section 408(a) or (b) of the Internal
34 Revenue Code or to a qualified defined contribution plan
35 described in Section 401(a) or 403(a) of the Internal Revenue
36 Code that agrees to separately account for amounts
37 transferred, including separately accounting for the portion of
38 the distribution which is includable in gross income and the
39 portion of the distribution which is not includable.

40 (2) "Eligible retirement plan" means an individual
41 retirement account described in Section 408(a) of the Internal
42 Revenue Code, an individual retirement annuity described in
43 Section 408(b) of the Internal Revenue Code, an annuity plan
44 described in Section 403(a) of the Internal Revenue Code or
45 a qualified plan described in Section 401(a) of the Internal
46 Revenue Code that accepts the distributee's eligible rollover
47 distribution: *Provided*, That in the case of an eligible

48 rollover distribution to the surviving spouse, an eligible
49 retirement plan is an individual retirement account or
50 individual retirement annuity. For distributions after the
51 thirty-first day of December, two thousand one, an eligible
52 retirement plan also means an annuity contract described in
53 Section 403(b) of the Internal Revenue Code and an eligible
54 plan under Section 457(b) of the Internal Revenue Code
55 which is maintained by a state, political subdivision of a state
56 or any agency or instrumentality of a state or political
57 subdivision of a state and which agrees to separately account
58 for amounts transferred into the plan from this system.

59 (3) "Distributee" means an employee or former
60 employee. In addition, the employee's or former employee's
61 surviving spouse and the employee's or former employee's
62 spouse or former spouse who is the alternate payee under a
63 qualified domestic relations order, as defined in Section
64 414(p) of the Internal Revenue Code with respect to
65 governmental plans, are distributees with regard to the
66 interest of the spouse or former spouse.

67 (4) "Direct rollover" means a payment by the system to
68 the eligible retirement plan.

69 (b) Nothing in this section may be construed as
70 permitting rollovers into this system or any other retirement
71 system administered by the board.

**§15-2A-6d. 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 two. 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
6 retirement system shall accept the following rollovers and
7 plan transfers on behalf of an employee solely for the

8 purpose of purchasing permissive service credit, in whole and
9 in part, as otherwise provided in this article or for the
10 repayment of withdrawn or refunded contributions, in whole
11 and in part, with respect to a previous forfeiture of service
12 credit as otherwise provided in this article: (i) One or more
13 rollovers within the meaning of Section 408(d)(3) of the
14 Internal Revenue Code from an individual retirement account
15 described in Section 408(a) of the Internal Revenue Code or
16 from an individual retirement annuity described in Section
17 408(b) of the Internal Revenue Code; (ii) one or more
18 rollovers described in Section 402 (c) of the Internal Revenue
19 Code from a retirement plan that is qualified under Section
20 401(a) of the Internal Revenue Code or from a plan described
21 in Section 403(b) of the Internal Revenue Code; (iii) one or
22 more rollovers described in Section 457(e)(16) of the Internal
23 Revenue Code from a governmental plan described in
24 Section 457 of the Internal Revenue Code; or (iv) direct
25 trustee-to-trustee transfers or rollovers from a plan that is
26 qualified under Section 401(a) of the Internal Revenue Code
27 from a plan described in Section 403(b) of the Internal
28 Revenue Code or from a governmental plan described in
29 Section 457 of the Internal Revenue Code: *Provided*, That
30 any rollovers or transfers pursuant to this section shall be
31 accepted by the system only if made in cash or other asset
32 permitted by the board and only in accordance with the
33 policies, practices and procedures established by the board
34 from time to time. For purposes of this section, the following
35 definitions apply:

36 (1) "Permissive service credit" means service credit
37 which is permitted to be purchased under the terms of the
38 retirement system by voluntary contributions in an amount
39 which does not exceed the amount necessary to fund the
40 benefit attributable to the period of service for which the
41 service credit is being purchased, all as defined in Section
42 415(n)(3)(A) of the Internal Revenue Code.

43 (2) "Repayment of withdrawn or refunded contributions"
44 means the payment into the retirement system of the funds

45 required pursuant to this article for the reinstatement of
46 service credit previously forfeited on account of any refund
47 or withdrawal of contributions permitted in this article, as set
48 forth in Section 415(k)(3) of the Internal Revenue Code.

49 (b) Nothing in this section shall be construed as
50 permitting rollovers or transfers into this system or any other
51 system administered by the board other than as specified in
52 this section and no rollover or transfer shall be accepted into
53 the system in an amount greater than the amount required for
54 the purchase of permissive service credit or repayment of
55 withdrawn or refunded contributions.

56 (c) Nothing in this section shall be construed as
57 permitting the purchase of service credit or repayment of
58 withdrawn or refunded contributions except as otherwise
59 permitted in this article.

§15-2A-7. Annual annuity adjustment.

1 (a) Every retirant of the fund who is sixty-three years of
2 age or older and who is retired by the board under the
3 provisions of section six of this article; every retirant who is
4 retired under the provisions of section nine or ten of this
5 article; and every surviving spouse receiving a benefit
6 pursuant to section twelve, thirteen or fourteen of this article
7 is eligible to receive an annual retirement annuity adjustment
8 equal to one percent of his or her retirement award or
9 surviving spouse award. The adjustments may not be
10 retroactive. Yearly adjustments shall begin upon the first day
11 of July of each year. The annuity adjustments shall be paid
12 to the retirant or surviving spouse from the fund in equal
13 monthly installments while the retirant or surviving spouse
14 are receiving annuity payments. The annuity adjustments
15 shall supplement the retirement awards and benefits provided
16 in this article.

17 (b) Any retirant or surviving spouse who receives a
18 benefit pursuant to the provisions of section nine, ten, twelve,

19 thirteen or fourteen of this article shall begin to receive the
20 annual annuity adjustment one year after the commencement
21 of the benefit on the next July first: *Provided*, That if the
22 retirant has been retired for less than one year or if the
23 surviving spouse has been in receipt of surviving spouse
24 payments for less than one year when the first annuity
25 adjustment is given on that July first, that first annuity
26 adjustment will be a pro rata share of the full year's annuity
27 adjustment.

**§15-2A-8. Refunds to certain members upon discharge of
resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the
2 superintendent or otherwise terminates employment with the
3 agency is, at the written request of the member to the board,
4 entitled to receive from the fund a sum equal to the aggregate
5 of the principal amount of moneys deducted from his or her
6 base salary and paid into the fund plus four percent interest
7 compounded thereon calculated annually as provided and
8 required by this article.

9 (b) Any member withdrawing contributions who may
10 thereafter be reemployed by the agency shall not receive any
11 prior service credit in the fund on account of former service.
12 The employee may redeposit in the fund established by this
13 article the amount of the refund, together with interest
14 thereon at the rate of seven and one-half percent per annum
15 from the date of withdrawal to the date of redeposit, in which
16 case he or she shall receive the same credit on account of his
17 or her former service as if no refund had been made.

18 (c) Every employee who completes ten years of service
19 with the agency is eligible, upon separation of employment,
20 to either withdraw his or her contributions in accordance with
21 subsection (a) of this section or to choose not to withdraw his
22 or her accumulated contributions. Upon attainment of age
23 sixty-two, a member who chooses not to withdraw his or her

24 contributions is eligible to receive a retirement annuity. The
25 annuity shall be payable during the lifetime of the retirant and
26 shall be in the amount of his or her accrued retirement benefit
27 as determined under section six of this article. The retirant
28 may choose, in lieu of a life annuity, an annuity in a reduced
29 amount payable during the retirant's lifetime, with one half
30 of the reduced monthly amount paid to his or her surviving
31 spouse for the spouse's remaining lifetime after the death of
32 the retirant. Reduction of the monthly benefit amount shall
33 be calculated to be of equal actuarial value to the life annuity
34 the retirant could otherwise have chosen. Any retirant
35 choosing to receive the deferred annuity under this subsection
36 is not eligible to receive the annual annuity adjustment
37 provided in section seven of this article. A retiring member
38 under the provisions of this section may receive retirement
39 annuity payments on the first day of the month following his
40 or her attaining age sixty-two and upon receipt of the
41 application for retirement. The board shall promptly provide
42 the member with an explanation of his or her optional forms
43 of retirement benefits and, upon receipt of properly executed
44 forms from the agency and member, the board shall process
45 the member's request for and commence payments as soon
46 as administratively feasible.

§15-2A-9. Awards and benefits for disability -- Incurred in performance of duty.

1 (a) Any employee of the agency who has not yet entered
2 retirement status on the basis of age and service and who
3 becomes partially disabled by injury, illness or disease
4 resulting from any occupational risk or hazard inherent in or
5 peculiar to the services required of employees of the agency
6 or incurred pursuant to or while the employee was engaged
7 in the performance of his or her duties as an employee of the
8 agency shall, if, in the opinion of the board, he or she is, by
9 reason of that cause, unable to perform adequately the duties
10 required of him or her as an employee of the agency, but is
11 able to engage in other gainful employment in a field other

12 than law enforcement, be retired from active service by the
13 board. The retirant thereafter is entitled to receive annually
14 from the fund in equal monthly installments during his or her
15 lifetime, or until the retirant attains the age of fifty-five or
16 until the disability eligibility sooner terminates, one or the
17 other of two amounts, whichever is greater:

18 (1) An amount equal to six tenths of the base salary
19 received in the preceding twelve-month employment period:
20 *Provided*, That if the member had not been employed with
21 the agency for twelve months prior to the disability, the
22 amount of monthly salary shall be annualized for the purpose
23 of determining the benefit; or

24 (2) The sum of six thousand dollars. The first day of the
25 month following the date in which the retirant attains age
26 fifty-five, the retirant shall receive the benefit provided in
27 section six of this article as it would apply to his or her final
28 average salary based on earnings from the agency through the
29 day immediately preceding his or her disability. The
30 recalculation of benefit upon a retirant attaining age fifty-five
31 shall be considered to be a retirement under the provisions of
32 section six of this article for purposes of determining the
33 amount of annual annuity adjustment and for all other
34 purposes of this article: *Provided*, That a retirant who is
35 partially disabled under this article may not, while in receipt
36 of benefits for partial disability, be employed as a law-
37 enforcement officer: *Provided, however*, That a retirant on
38 a partial disability under this article may serve as an elected
39 sheriff or appointed chief of police in the state without a loss
40 of disability retirement benefits as long as the elected or
41 appointed position is shown, to the satisfaction of the board,
42 to require the performance of administrative duties and
43 functions only, as opposed to the full range of duties of a
44 law-enforcement officer.

45 (b) Any member who has not yet entered retirement
46 status on the basis of age and service and who becomes

47 physically or mentally disabled by injury, illness or disease
48 on a probable permanent basis resulting from any
49 occupational risk or hazard inherent in or peculiar to the
50 services required of employees of the agency or incurred
51 pursuant to or while the employee was or is engaged in the
52 performance of his or her duties as an employee of the
53 agency to the extent that the employee is incapacitated ever
54 to engage in any gainful employment, the employee is
55 entitled to receive annually, and there shall be paid from the
56 fund in equal monthly installments during his or her lifetime
57 or until the disability sooner terminates, an amount equal to
58 the base salary received by the employee in the preceding full
59 twelve-month employment period. Until a member has
60 worked twelve months, the amount of monthly base salary shall be
61 annualized for the purpose of determining the benefit.

62 (c) The superintendent of the agency may expend moneys
63 from funds appropriated for the agency in payment of
64 medical, surgical, laboratory, X-ray, hospital, ambulance and
65 dental expenses and fees and reasonable costs and expenses
66 incurred in the purchase of artificial limbs and other
67 approved appliances which may be reasonably necessary for
68 any retirant who is temporarily, permanently or totally
69 disabled by injury, illness or disease resulting from any
70 occupational risk or hazard inherent in or peculiar to the
71 service required of employees of the agency or incurred
72 pursuant to or while the employee was or shall be engaged in
73 the performance of duties as an employee of the agency.
74 Whenever the superintendent determines that any disabled
75 retirant is ineligible to receive any of the benefits in this
76 section at public expense, the superintendent shall, at the
77 request of the disabled retirant, refer the matter to the board
78 for hearing and final decision. In no case will the
79 compensation rendered to health care providers for medical
80 and hospital services exceed the then current rate schedule
81 approved by the West Virginia Insurance Commission. Upon
82 termination of employment and receipt of properly executed
83 forms from the agency and the member, the board shall
84 process the member's disability retirement benefit and

85 commence annuity payments as soon as administratively
86 feasible.

§15-2A-10. Same -- Due to other causes.

1 (a) If any employee while in active service of the agency
2 becomes partially or totally disabled on a probable permanent
3 basis to the extent that the employee cannot adequately
4 perform the duties required of an employee of the agency
5 from any cause other than those set forth in the preceding
6 section and not due to vicious habits, intemperance or willful
7 misconduct on his or her part, the employee shall be retired
8 by the board. There shall be paid annually to the retirant
9 from the fund in equal monthly installments, commencing on
10 the date the retirant is retired and continuing during the
11 lifetime of the retirant or until the retirant attains the age of
12 fifty-five; while in status of retirement an amount equal to
13 one half the base salary received by the retirant in the
14 preceding full twelve-month period: *Provided*, That if the
15 retirant had not been employed with the agency for twelve
16 full months prior to the disability, the amount of monthly
17 base salary shall be annualized for the purpose of
18 determining the benefit.

19 (b) The first day of the month following the date in which
20 the retirant attains age fifty-five, the retirant shall receive the
21 benefit provided in section six of this article as it would apply
22 to his or her final average salary based on earnings from the
23 agency through the day immediately preceding his or her
24 disability. The recalculation of benefit upon a retirant
25 attaining age fifty-five shall be considered to be a retirement
26 under the provisions of section six of this article for purposes
27 of determining the amount of annual annuity adjustment and
28 for all other purposes of this article.

§15-2A-11. Same -- Physical examinations; termination.

1 The board may require any disabled retirant to submit to
2 a physical or mental examination or both a physical and

3 mental examination by a physician or physicians selected or
4 approved by the board and cause all costs incident to the
5 examination, including hospital, laboratory, X-ray, medical
6 and physicians' fees, to be paid out of funds appropriated to
7 defray the current expenses of the agency, and the physician
8 or physicians shall submit a report of the findings of the
9 physician or physicians in writing to the board for its
10 consideration. If from the report, or from the report and
11 hearing on the report, the board is of the opinion and finds
12 that the disabled retirant has recovered from the disability to
13 the extent that he or she is able to perform adequately the
14 duties of a law-enforcement officer, the board shall order that
15 all payments from the fund to that disabled retirant be
16 terminated. If from the report, or the report and hearing on
17 the report, the board is of the opinion and finds that the
18 disabled retirant has recovered from his or her previously
19 determined probable permanent disability to the extent that
20 he or she is able to engage in any gainful employment, but
21 unable to adequately perform the duties of a law-enforcement
22 officer, the board shall order, in the case of a disabled retirant
23 receiving benefits under the provisions of section nine of this
24 article, that the disabled retirant be paid annually from the
25 fund an amount equal to six tenths of the base salary paid to
26 the retirant in the last full twelve-month employment period.
27 The board shall order, in the case of a disabled retirant
28 receiving benefits under the provisions of section ten of this
29 article, that the disabled retirant be paid from the fund an
30 amount equal to one fourth of the base salary paid to the
31 retirant in the last full twelve-month employment period:
32 *Provided*, That if the retirant had not been employed with the
33 agency for twelve full months prior to the disability, the
34 amount of monthly salary shall be annualized for the purpose
35 of determining the benefit.

**§15-2A-11a. Physical examinations of prospective members;
application for disability benefit;
determinations.**

1 (a) Not later than thirty days after an employee becomes
2 a member of the fund, the employer shall forward to the
3 board a copy of the physician's report of a physical
4 examination which incorporates the standards or procedures
5 described in section seven, article two, chapter fifteen of this
6 code. A copy of the physicians's report shall be placed in the
7 employee's retirement system file maintained by the board.

8 (b) Application for a disability benefit may be made by
9 an employee or, if the employee is under an incapacity, by a
10 person acting with legal authority on the employee's behalf.
11 After receiving an application for a disability benefit, the
12 board shall notify the superintendent of the agency that an
13 application has been filed: *Provided*, That when, in the
14 judgment of the superintendent, an employee is no longer
15 physically or mentally fit for continued duty as an employee
16 of the agency and the employee has failed or refused to make
17 application for disability benefits under this article, the
18 superintendent may petition the board to retire the employee
19 on the basis of disability pursuant to legislative rules
20 proposed in accordance with article three, chapter
21 twenty-nine-a of this code. Within thirty days of the
22 superintendent's receipt of the notice from the board or the
23 filing of the superintendent's petition with the board, the
24 superintendent shall forward to the board a statement
25 certifying the duties of the employee's job description,
26 information relating to the superintendent's position on the
27 work relatedness of the employee's alleged disability,
28 complete copies of the employee's medical file and any other
29 information requested by the board in its processing of the
30 application.

31 (c) The board shall propose legislative rules in
32 accordance with article three, chapter twenty-nine-a of this
33 code relating to the processing of applications and petitions
34 for disability retirement under this article.

35 (d) The board shall notify an employee and the
36 superintendent of its final action on the disability application
37 or petition within ten days of the board's final action. The
38 notice shall be sent by certified mail, return receipt requested.
39 If either the employee or the superintendent is aggrieved by
40 the decision of the board and intends to pursue judicial
41 review of the board's decision as provided in section four,
42 article five, chapter twenty-nine-a of this code, the party
43 aggrieved shall notify the board within twenty days of the
44 employee's or superintendent's receipt of the board's notice that
45 they intend to pursue judicial review of the board's decision.

46 (e) The board may require a disabled retirant to file an
47 annual statement of earnings and any other information
48 required in rules which may be adopted by the board. The
49 board may waive the requirement that a disabled retirant file
50 the annual statement of earnings if the board's physician
51 certifies that the recipient's disability is ongoing. The board
52 shall annually examine the information submitted by the
53 disabled retirant. If a disabled retirant refuses to file the
54 statement or information, the disability benefit shall be
55 suspended until the statement and information are filed.

§15-2A-11b. Annual report on each employer's disability retirement experience.

1 Not later than the first day of January, two thousand six,
2 and each first day of January thereafter, the board shall
3 prepare a report for the preceding fiscal year of the disability
4 retirement experience of the West Virginia State Police
5 Retirement Fund. The report shall specify the total number
6 of disability applications submitted, the status of each
7 application as of the last day of the fiscal year, total
8 applications granted or denied and the percentage of
9 disability benefit recipients to the total number agency
10 employees who are members of the fund. The report shall be
11 submitted to the Governor and the chairpersons of the
12 standing committees of the Senate and House of Delegates
13 with primary responsibility for retirement legislation.

**§15-2A-12. Awards and benefits to dependents of employees or
retirants - When employee dies in performance
of duty, etc.; dependent child scholarship and
amount.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any employee who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the
6 employee was engaged in the performance of his or her
7 duties as an employee of the agency, or the survivor of a
8 retirant who dies from any cause after having been retired
9 pursuant to the provisions of section nine of this article, is
10 entitled to receive and shall be paid from the fund benefits as
11 follows: To the surviving spouse annually, in equal monthly
12 installments during his or her lifetime, one or the other of two
13 amounts, which shall become payable the first day of the
14 month following the employee's or retirant's death and which
15 shall be the greater of:

16 (1) An amount equal to nine tenths of the base salary
17 received in the preceding full twelve-month employment
18 period by the deceased employee: *Provided*, That if the
19 employee had not been employed with the agency for twelve
20 full months prior to his or her death, the amount of monthly
21 salary shall be annualized for the purpose of determining the
22 benefit; or

23 (2) The sum of ten thousand dollars.

24 In addition, the surviving spouse is entitled to receive and
25 shall be paid one hundred fifty dollars monthly for each
26 dependent child. If the surviving spouse dies or if there is no
27 surviving spouse, there shall be paid monthly to each
28 dependent child or children from the fund a sum equal to one
29 third of the surviving spouse's entitlement. If there is no
30 surviving spouse and no dependent child or children, there

31 shall be paid annually in equal monthly installments from the
32 fund to the dependent parents of the deceased member during
33 their joint lifetimes a sum equal to the amount which a
34 surviving spouse, without children, would have received:
35 *Provided*, That when there is one dependent parent surviving,
36 that parent is entitled to receive during his or her lifetime
37 one-half the amount which both parents, if living, would have
38 been entitled to receive: *Provided, however*, That if there is
39 no surviving spouse, dependent child, or dependent parent of
40 the deceased member, the accumulated contributions shall be
41 paid to a named beneficiary or beneficiaries: *Provided*
42 *further*, That if there is no surviving spouse, dependent child,
43 dependent parent of the deceased member or any named
44 beneficiary or beneficiaries, then the accumulated
45 contributions shall be paid to the estate of the deceased
46 member.

47 Any person qualifying as a surviving dependent child
48 under this section, in addition to any other benefits due under
49 this or other sections of this article, is entitled to receive a
50 scholarship to be applied to the career development education
51 of that person. This sum, up to but not exceeding seven
52 thousand five hundred dollars, shall be paid from the fund to
53 any university or college in this state or to any trade or
54 vocational school or other entity in this state approved by the
55 board to offset the expenses of tuition, room and board,
56 books, fees or other costs incurred in a course of study at any
57 of these institutions as long as the recipient makes application
58 to the board on an approved form and under rules provided
59 by the board and maintains scholastic eligibility as defined by
60 the institution or the board. The board may by appropriate
61 rules define age requirements, physical and mental
62 requirements, scholastic eligibility, disbursement methods,
63 institutional qualifications and other requirements as
64 necessary and not inconsistent with this section.

65 A surviving spouse or dependent of an employee meeting
66 the requirements of this section is entitled to receive

67 beneficiary payments on the first day of the month following
68 the date the deceased member is removed from payroll by the
69 agency. A surviving spouse or dependent of a member who
70 is not currently an employee meeting the requirements of this
71 section is entitled to receive beneficiary payments on the first
72 day of the month following the date of the deceased
73 member's death. A surviving spouse or dependent of a
74 retirant meeting the requirements of this section is entitled to
75 receive beneficiary payments on the first day of the month
76 following the date of the deceased retirant's death. Upon
77 receipt of properly executed forms from the agency and
78 surviving spouse or dependent, the board shall process the
79 surviving spouse or dependent benefit as soon as
80 administratively feasible.

81 It is the intent of the Legislature that the levels of benefits
82 provided by operation of this section from the effective date
83 of the enactment of this section during the regular session of
84 the Legislature, two thousand five, be the same levels of
85 benefits as provided by this section as amended and
86 reenacted during the fourth extraordinary session of the
87 Legislature, two thousand five. Accordingly, the effective
88 date of the operation of this section as amended and
89 reenacted during the fourth extraordinary session of the
90 Legislature, two thousand five, is expressly made
91 retrospective to the ninth day of April, two thousand five.

§15-2A-13. Same -- When member dies from nonservice-connected causes before serving twenty years.

1 (a) In any case where an employee while in active service
2 of the agency, before having completed twenty years of
3 service as an employee of the agency, dies from any cause
4 other than those specified in this article and not due to
5 vicious habits, intemperance or willful misconduct on his or
6 her part, there shall be paid annually in equal monthly
7 installments from the fund to the surviving spouse of the
8 member during his or her lifetime, or until the surviving

9 spouse remarries, a sum equal to one half of the base salary
10 received in the preceding full twelve-month employment
11 period by the deceased member: *Provided*, That if the
12 member had not been employed with the agency for twelve
13 full months prior to the disability, the amount of monthly
14 salary shall be annualized for the purpose of determining the
15 benefit. If there is no surviving spouse or the surviving
16 spouse dies or remarries, there shall be paid monthly to each
17 dependent child or children from the fund a sum equal to one
18 fourth of the surviving spouse's entitlement. If there is no
19 surviving spouse and no dependent child or children, there
20 shall be paid annually in equal monthly installments from the
21 fund to the dependent parents of the deceased member during
22 their joint lifetimes a sum equal to the amount that a
23 surviving spouse would have been entitled to receive:
24 *Provided, however*, That when there is one dependent parent
25 surviving, then that parent is entitled to receive during his or
26 her lifetime one half the amount which both parents, if living,
27 would have been entitled to receive: *Provided further*, That
28 if there is no surviving spouse, dependent child or dependent
29 parent of the deceased member, the accumulated
30 contributions shall be paid to a named beneficiary or
31 beneficiaries: *And provided further*, That if there is no
32 surviving spouse, dependent child, dependent parent of the
33 deceased member or any named beneficiary or beneficiaries,
34 then the accumulated contributions shall be paid to the estate
35 of the deceased member.

36 (b) A surviving spouse or dependent of an employee
37 meeting the requirements of this section is entitled to receive
38 beneficiary payments on the first day of the month following
39 the date the deceased member is removed from payroll by the
40 agency. A surviving spouse or dependent of a member who
41 is not currently an employee meeting the requirements of this
42 section is entitled to receive beneficiary payments on the first
43 day of the month following the date of the deceased
44 member's death. A surviving spouse or dependent of a
45 retirant meeting the requirements of this section is entitled to

46 receive beneficiary payments on the first day of the month
47 following the date of the deceased retirant's death. Upon
48 receipt of properly executed forms from the agency and
49 surviving spouse or dependent, the board shall process the
50 surviving spouse or dependent benefit as soon as
51 administratively feasible.

**§15-2A-14. Awards and benefits to dependents of member --
When member dies after retirement or after
serving twenty years.**

1 (a) When any employee of the agency has completed
2 twenty years of service or longer as an employee of the
3 agency and dies from any cause or causes other than those
4 specified in this article before having been retired by the
5 board and when a retirant has died or dies after having been
6 retired by the board under the provisions of this article, there
7 shall be paid annually in equal monthly installments from the
8 fund to the surviving spouse of the member or retirant, during
9 the lifetime or until remarriage of the surviving spouse, an
10 amount equal to two thirds of the retirement benefit which
11 the deceased retirant was receiving while in status of
12 retirement or would have been entitled to receive to the same
13 effect as if the member had been retired under the provisions
14 of this article immediately prior to the time of his or her
15 death. In no event shall the annual benefit payable be less
16 than five thousand dollars. In addition, the surviving spouse
17 is entitled to receive and there shall be paid to the surviving
18 spouse from the fund the sum of one hundred dollars monthly
19 for each dependent child. If the surviving spouse dies or
20 remarries, or if there is no surviving spouse, there shall be
21 paid monthly from the fund to each dependent child or
22 children of the deceased member a sum equal to one fourth
23 of the surviving spouse's entitlement. If there is no surviving
24 spouse or no surviving spouse eligible to receive benefits and
25 no dependent child or children, there shall be paid annually
26 in equal monthly installments from the fund to the dependent
27 parents of the deceased member during their joint lifetimes a

28 sum equal to the amount which a surviving spouse without
29 children would have been entitled to receive: *Provided*, That
30 when there is one dependent parent surviving, that parent is
31 entitled to receive during his or her lifetime one-half the
32 amount which both parents, if living, would have been
33 entitled to receive: *Provided, however*, That if there is no
34 surviving spouse, dependent child or dependent parent of the
35 deceased member, the accumulated contributions shall be
36 paid to a named beneficiary or beneficiaries: *Provided*
37 *further*, That if there is no surviving spouse, dependent child,
38 dependent parent of the deceased member or any named
39 beneficiary or beneficiaries, then the accumulated
40 contributions shall be paid to the estate of the deceased
41 member.

42 (b) The retirant may choose a higher percentage of
43 surviving spouse benefits by taking an actuarially determined
44 reduced initial benefit so that the chosen spouse benefit and
45 initial benefit would be actuarially equivalent to the normal
46 spouse benefit and initial benefit. The board shall design
47 these benefit options and provide them as choices for the
48 retirant to select. For the purposes of this subsection, "initial
49 benefit" means the benefit received by the retirant upon
50 retirement.

**§15-2A-15. Exemption from taxation, garnishment and other
process; exception for certain qualified domestic
relations orders.**

1 The moneys in the fund and the right of a member or
2 retirant to a retirement allowance, to the return of
3 contributions or to any benefit under the provisions of this
4 article are hereby exempt from any state or municipal tax; are
5 not subject to execution, garnishment, attachment or any
6 other process whatsoever except that the benefits or
7 contributions under this system are subject to "qualified
8 domestic relations orders" as that term is defined in Section
9 414(p) of the Internal Revenue Code with respect to

10 governmental plans; and are unassignable except as is
11 provided in this article.

**§15-2A-17. Awards and benefits to dependents of member --
Termination.**

1 When any surviving spouse of a member or retirant dies
2 or remarries while receiving or being entitled to receive any
3 benefits under any section except section twelve of this
4 article, the surviving spouse may not from the date of his or
5 her remarriage, nor may the estate from the date of death of
6 the deceased member's or retirant's surviving spouse, be
7 entitled to receive any benefits under this article whatsoever:
8 *Provided*, That in any case where under the terms of this
9 article benefits are provided for a child or children surviving
10 the death or remarriage of the surviving spouse, payment of
11 benefits to that child or children shall be calculated for
12 payment from the date the surviving spouse dies or remarries.

**§15-2A-19. 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 credited service
3 for the purpose of determining the amount of retirement
4 award under the provisions of this article for a period equal
5 to the active military duty not to exceed five years, subject to
6 the following:

7 (1) That he or she has been honorably discharged from
8 the armed forces;

9 (2) That he or she substantiates by appropriate
10 documentation or evidence his or her period of active
11 military duty;

12 (3) That he or she is receiving no benefits from any other
13 retirement system for his or her active military duty; and

14 (4) That, except with respect to disability retirement pay
15 awarded under this article, he or she has actually served with
16 the agency for twenty years exclusive of his or her active
17 military duty.

18 (b) In addition, any person who, while an employee of the
19 agency, was commissioned, enlisted or inducted into the
20 armed forces of the United States or, being a member of the
21 reserve officers' corps, was called to active duty in the armed
22 forces between the first day of September, one thousand nine
23 hundred forty, and the close of hostilities in World War II, or
24 between the twenty-seventh day of June, one thousand nine
25 hundred fifty, and the close of the armed conflict in Korea on
26 the twenty-seventh day of July, one thousand nine hundred
27 fifty-three, between the first day of August, one thousand
28 nine hundred sixty-four, and the close of the armed conflict
29 in Vietnam, or during any other period of armed conflict by
30 the United States whether sanctioned by a declaration of war
31 by Congress or by executive or other order of the President,
32 is entitled to and shall receive credit on the minimum period
33 of service required by law for retirement pay from the service
34 of the agency, or its predecessor agency, for a period equal to
35 the full time that he or she has or, pursuant to that
36 commission, enlistment, induction or call, shall have served
37 with the armed forces subject to the following:

38 (1) That he or she has been honorably discharged from
39 the armed forces;

40 (2) That, within ninety days after honorable discharge
41 from the armed forces, he or she presented himself or herself
42 to the superintendent and offered to resume service as an
43 active member of the agency; and

44 (3) That he or she has made no voluntary act, whether by
45 reenlistment, waiver of discharge, acceptance of commission

46 or otherwise, to extend or participate in extension of the
47 period of service with the armed forces beyond the period of
48 service for which he or she was originally commissioned,
49 enlisted, inducted or called.

50 (c) The total amount of military service credit allowable
51 under this section may not exceed five years for any member
52 of the agency.

53 (d) Notwithstanding the preceding provisions of this
54 section, contributions, benefits and service credit with respect
55 to qualified military service shall be provided in accordance
56 with Section 414 (u) of the Internal Revenue Code. For
57 purposes of this section, "qualified military service" has the
58 same meaning as in Section 414 (u) of the Internal Revenue
59 Code. The board shall determine all questions and make all
60 decisions relating to this section and, pursuant to the
61 authority granted to the board in section one, article ten-d,
62 chapter five of this code, may promulgate rules relating to
63 contributions, benefits and service credit to comply with
64 Section 414 (u) of the Internal Revenue Code.



CHAPTER 202

(Com. Sub. for S.B. 323 - By Senators Bowman and Oliverio)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 17, 2008.]

AN ACT to amend and reenact §8-20-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13-16 and §16-13-23a of said code; and to amend and reenact §16-13A-9 of said code, all relating to the establishment and operation of stormwater systems; authorizing municipalities to

set rates, charges and fees for stormwater services; providing that water service may be terminated for nonpayment of stormwater service fees; authorizing municipalities to adopt ordinances or regulations to allow issuance of orders, entry on property, setting fines and penalties for violation of stormwater law; establishing requirements for notice of violations; authorizing municipality to correct violations and collect cost from violator; and providing that the owner, occupant or tenant of real property is deemed to be served by a stormwater system under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §8-20-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13-16 and §16-13-23a of said code be amended and reenacted; and that §16-13A-9 of said code be amended and reenacted, all to read as follows:

Chapter

- 8. Municipal Corporations.
- 16. Public Health.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing
2 itself of the provisions of this article shall have plenary power
3 and authority to make, enact and enforce all necessary rules
4 for the repair, maintenance, operation and management of the
5 combined system of the municipality and for the use thereof.
6 The governing body of a municipality also has the plenary
7 power and authority to make, enact and enforce all necessary
8 rules and ordinances for the care and protection of any such
9 system for the health, comfort and convenience of the public,
10 to provide a clean water supply, to provide properly treated
11 sewage insofar as it is reasonably possible to do and, if
12 applicable, to properly collecting and controlling the
13 stormwater as is reasonably possible to do: *Provided*, That
14 no municipality may make, enact or enforce any rule,
15 regulation or ordinance regulating any highways, road or
16 drainage easements or storm water facilities constructed,
17 owned or operated by the West Virginia Division of
18 Highways.

19 (2) A municipality has the plenary power and authority
20 to charge the users for the use and service of a combined
21 system and to establish required deposits, rates, fees or
22 charges for such purpose. Separate deposits, rates, fees or
23 charges may be fixed for the water and sewer services
24 respectively and, if applicable, the stormwater services, or
25 combined rates, fees or for the combined water and sewer
26 services, and, if applicable, the storm water services. Such
27 deposits, rates, fees or charges, whether separate or
28 combined, shall be sufficient at all times to pay the cost of
29 repair, maintenance and operation of the combined system,
30 provide an adequate reserve fund, an adequate depreciation
31 fund and pay the principal and interest upon all revenue
32 bonds issued under this article. Deposits, rates, fees or
33 charges shall be established, revised and maintained by
34 ordinance and become payable as the governing body may
35 determine by ordinance. The rates, fees or charges shall be
36 changed, from time to time, as necessary, consistent with the
37 provisions of this article.

38 (3) All new applicants for service shall indicate to the
39 municipality or governing body whether they are an owner or
40 tenant with respect to the service location. An entity
41 providing stormwater service shall provide a tenant a report
42 of the stormwater fee charged for the entire property and, if
43 appropriate, that portion of the fee to be assessed to the
44 tenant.

45 (4) The municipality or governing body, but only one of
46 them, may collect from all new applicants for service a
47 deposit of one hundred dollars or two twelfths of the average
48 annual usage of the applicant's specific customer class,
49 whichever is greater, to secure the payment of water and
50 sewage service rates, fees and charges in the event they
51 become delinquent as provided in this section. In any case
52 where a deposit is forfeited to pay service rates, fees and
53 charges which were delinquent and the user's service is
54 disconnected or terminated, service may not be reconnected
55 or reinstated by the municipality or governing body until
56 another deposit equal to one hundred dollars or a sum equal
57 to two twelfths of the average usage for the applicant's
58 specific customer class, whichever is greater, is remitted to
59 the municipality or governing body. After twelve months of
60 prompt payment history, the municipality or governing body
61 shall return the deposit to the customer or credit the
62 customer's account with interest at a rate to be set by the
63 Public Service Commission: *Provided*, That where the
64 customer is a tenant, the municipality or governing body is
65 not required to return the deposit until the time the tenant
66 discontinues service with the municipality or governing body.
67 Whenever any rates, fees, rentals or charges for services or
68 facilities furnished remain unpaid for a period of twenty days
69 after they become due, the user of the services and facilities
70 provided is delinquent and the user is liable at law until all
71 rates, fees and charges are fully paid. The municipality or
72 governing body may terminate water services to a delinquent
73 user of either water or sewage facilities, or both, ten days
74 after the water or sewage services become delinquent

75 regardless of whether the governing body utilizes the security
76 deposit to satisfy any delinquent payments: *Provided*, That
77 any termination of water service must comply with all rules
78 and orders of the Public Service Commission.

79 (b) Whenever any rates, fees or charges for services or
80 facilities furnished remain unpaid for a period of twenty days
81 after they become due, the user of the services and facilities
82 provided shall be delinquent and the municipality or
83 governing body may apply any deposit against any
84 delinquent fee. The user is liable until such time as all rates,
85 fees and charges are fully paid.

86 (c) All rates, fees or charges for water service, sewer
87 service and, if applicable, stormwater service, whenever
88 delinquent, as provided by ordinance of the municipality,
89 shall be liens of equal dignity, rank and priority with the lien
90 on such premises of state, county, school and municipal taxes
91 for the amount thereof upon the real property served. The
92 municipality has the plenary power and authority to enforce
93 such lien in a civil action to recover the money due for
94 services rendered plus court fees and costs and reasonable
95 attorney's fees: *Provided*, That an owner of real property
96 may not be held liable for the delinquent rates, fees or
97 charges for services or facilities of a tenant, nor shall any lien
98 attach to real property for the reason of delinquent rates, fees
99 or charges for services or facilities of a tenant of the real
100 property, unless the owner has contracted directly with the
101 municipality to purchase such services or facilities.

102 (d) Municipalities are hereby granted a deferral of filing
103 fees or other fees and costs incidental to filing an action in
104 magistrate court for collection of the delinquent rates and
105 charges. If the municipality collects the delinquent account,
106 plus fees and costs, from its customer or other responsible
107 party, the municipality shall pay to the magistrate court the
108 filing fees or other fees and costs which were previously
109 deferred.

110 (e) No municipality may foreclose upon the premises
111 served by it for delinquent rates, fees or charges for which a
112 lien is authorized by this section except through a civil action
113 in the circuit court of the county wherein the municipality
114 lies. In every such action, the court shall be required to make
115 a finding based upon the evidence and facts presented that the
116 municipality has exhausted all other remedies for collection
117 of debts with respect to such delinquencies prior to bringing
118 the action. In no event shall foreclosure procedures be
119 instituted by any municipality or on its behalf unless the
120 delinquency has been in existence or continued for a period
121 of two years from the date of the first delinquency for which
122 foreclosure is being sought.

123 (f) Notwithstanding any other provision contained in this
124 article, a municipality which has been designated by the
125 Environmental Protection Agency as an entity to serve a
126 West Virginia Separate Storm Sewer System community, as
127 defined in 40 C. F. R. §122.26, has the authority to enact
128 ordinances or regulations which allow for the issuance of
129 orders, the right to enter properties and the right to impose
130 reasonable fines and penalties regarding correction of
131 violations of municipal stormwater ordinances or regulations
132 within the municipal watershed served by the municipal
133 stormwater system, as long as such rules, regulations, fines
134 or acts are not contrary to any rules or orders of the Public
135 Service Commission.

136 (g) Notice of a violation of a municipal stormwater
137 ordinance or regulation shall be served in person to the
138 alleged violator or by certified mail, return receipt requested.
139 The notice shall state the nature of the violation, the potential
140 penalty, the action required to correct the violation and the
141 time limit for making the correction. Should a person, after
142 receipt of proper notice, fail to correct violation of the
143 municipal stormwater ordinance or regulation, the
144 municipality may correct or have the corrections of the

145 violation made and bring the party into compliance with the
146 applicable stormwater ordinance or regulation. The
147 municipality may collect the costs of correcting the violation
148 from the person by instituting a civil action, as long as such
149 actions are not contrary to any rules or orders of the Public
150 Service Commission.

151 (h) A municipality which has been designated by the
152 Environmental Protection Agency as an entity to serve a
153 West Virginia Separate Storm Sewer System community
154 shall prepare an annual report detailing the collection and
155 expenditure of rates, fees or charges and make it available for
156 public review at the place of business of the governing body
157 and the stormwater utility main office.

CHAPTER 16. PUBLIC HEALTH.

Article

13. Sewage Works and Stormwater Works.

13A. Public Service Districts.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

§16-13-23a. Additional powers of municipality to cease pollution.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

1 A governing body has the power and duty, by ordinance,
2 to establish and maintain just and equitable rates, fees or
3 charges for the use of and the service rendered by:

4 (a) Sewerage works, to be paid by the owner of each and
5 every lot, parcel of real estate or building that is connected
6 with and uses such works by or through any part of the
7 sewerage system of the municipality or that in any way uses
8 or is served by such works; and

9 (b) Stormwater works, to be paid by the owner of each
10 and every lot, parcel of real estate or building that in any way
11 uses or is served by such stormwater works or whose
12 property is improved or protected by the stormwater works
13 or any user of such stormwater works.

14 (c) The governing body may change and readjust such
15 rates, fees or charges from time to time. However, no rates,
16 fees or charges for stormwater services may be assessed
17 against highways, road and drainage easements or stormwater
18 facilities constructed, owned or operated by the West
19 Virginia Division of Highways.

20 (d) All new applicants for service shall indicate to the
21 governing body whether they are an owner or tenant with
22 respect to the service location. An entity providing
23 stormwater service shall provide a tenant a report of the
24 stormwater fee charged for the entire property and, if
25 appropriate, that portion of the fee to be assessed to the
26 tenant.

27 (e) The governing body may collect from all new
28 applicants for service a deposit of fifty dollars or two twelfths
29 of the average annual usage of the applicant's specific
30 customer class, whichever is greater, to secure the payment
31 of service rates, fees and charges in the event they become
32 delinquent as provided in this section. In any case where a
33 deposit is forfeited to pay service rates, fees and charges
34 which were delinquent at the time of disconnection or
35 termination of service, service may not be reconnected or
36 reinstated by the governing body until another deposit equal
37 to fifty dollars or a sum equal to two twelfths of the average

38 usage for the applicant's specific customer class, whichever
39 is greater, is remitted to the governing body. After twelve
40 months of prompt payment history, the governing body shall
41 return the deposit to the customer or credit the customer's
42 account with interest at a rate as the Public Service
43 Commission may prescribe: *Provided*, That where the
44 customer is a tenant, the governing body is not required to
45 return the deposit until the time the tenant discontinues
46 service with the governing body. Whenever any rates, fees,
47 rentals or charges for services or facilities furnished remain
48 unpaid for a period of twenty days after they become due, the
49 user of the services and facilities provided is delinquent. The
50 user is liable until all rates, fees and charges are fully paid.
51 The governing body may, under reasonable rules
52 promulgated by the Public Service Commission, shut off and
53 discontinue water services to a delinquent user of sewer
54 facilities ten days after the sewer services become delinquent
55 regardless of whether the governing body utilizes the security
56 deposit to satisfy any delinquent payments.

57 (f) Such rates, fees or charges shall be sufficient in each
58 year for the payment of the proper and reasonable expense of
59 operation, repair, replacements and maintenance of the works
60 and for the payment of the sums herein required to be paid
61 into the sinking fund. Revenues collected pursuant to this
62 section shall be considered the revenues of the works.

63 (g) No such rates, fees or charges shall be established
64 until after a public hearing, at which all the users of the
65 works and owners of property served or to be served thereby
66 and others interested shall have an opportunity to be heard
67 concerning the proposed rates, fees or charges.

68 (h) After introduction of the ordinance fixing such rates,
69 fees or charges, and before the same is finally enacted, notice
70 of such hearing, setting forth the proposed schedule of rates,
71 fees or charges, shall be given by publication as a Class II-0
72 legal advertisement in compliance with the provisions of

73 article three, chapter fifty-nine of this code and the
74 publication area for such publication shall be the
75 municipality. The first publication shall be made at least ten
76 days before the date fixed in the notice for the hearing.

77 (i) After the hearing, which may be adjourned, from time
78 to time, the ordinance establishing rates, fees or charges,
79 either as originally introduced or as modified and amended,
80 shall be passed and put into effect. A copy of the schedule of
81 the rates, fees and charges shall be kept on file in the office
82 of the board having charge of the operation of such works,
83 and also in the office of the clerk of the municipality, and
84 shall be open to inspection by all parties interested. The
85 rates, fees or charges established for any class of users or
86 property served shall be extended to cover any additional
87 premises thereafter served which fall within the same class,
88 without the necessity of any hearing or notice.

89 (j) Any change or readjustment of such rates, fees or
90 charges may be made in the same manner as the rates, fees or
91 charges were originally established as hereinbefore provided:
92 *Provided*, That if a change or readjustment be made
93 substantially pro rata, as to all classes of service, no hearing
94 or notice shall be required. The aggregate of the rates, fees
95 or charges shall always be sufficient for the expense of
96 operation, repair and maintenance and for the sinking fund
97 payments.

98 (k) All rates, fees or charges, if not paid when due, shall
99 constitute a lien upon the premises served by such works. If
100 any service rate, fees or charge is not paid within twenty days
101 after it is due, the amount thereof, together with a penalty of
102 ten percent and a reasonable attorney's fee, may be recovered
103 by the board in a civil action in the name of the municipality.
104 The lien may be foreclosed against such lot, parcel of land or
105 building in accordance with the laws relating thereto. Where
106 both water and sewer services are furnished by any

107 municipality to any premises, the schedule of charges may be
108 billed as a single amount or individually itemized and billed
109 for the aggregate thereof.

110 (l) Whenever any rates, rentals, fees or charges for
111 services or facilities furnished shall remain unpaid for a
112 period of twenty days after they become due, the property
113 and the owner thereof, as well as the user of the services and
114 facilities shall be delinquent until such time as all rates, fees
115 and charges are fully paid. When any payment for rates,
116 rentals, fees or charges becomes delinquent, the governing
117 body may use the security deposit to satisfy the delinquent
118 payment.

119 (m) The board collecting the rates, fees or charges shall
120 be obligated under reasonable rules to shut off and
121 discontinue both water and sewer services to all delinquent
122 users of water, sewer or stormwater facilities and shall not
123 restore either water facilities or sewer facilities to any
124 delinquent user of any such facilities until all delinquent
125 rates, fees or charges for water, sewer and stormwater
126 facilities, including reasonable interest and penalty charges,
127 have been paid in full, as long as such actions are not
128 contrary to any rules or orders of the Public Service
129 Commission.

**§16-13-23a. Additional powers of municipality to cease
pollution.**

1 (a) Notwithstanding any other provision contained in this
2 article, and in addition thereto, the governing body of any
3 municipality which has received or which hereafter receives
4 an order issued by the Secretary of the Department of
5 Environmental Protection or the Environmental Quality
6 Board requiring the municipality to cease the pollution of any
7 stream or waters is hereby authorized to establish and
8 maintain, by ordinance, just and equitable rates, fees or

9 charges for the use of the services and facilities of the
10 existing municipal sewer system and/or stormwater system,
11 or for the use of the services and facilities to be rendered
12 upon completion of any works and system necessary by
13 virtue of said order, to be paid by the owner, tenant or
14 occupant of each and every lot or parcel of real estate or
15 building that is connected with and uses any part of such
16 sewer system or stormwater system, or that in any way uses
17 or is served thereby, and may change and readjust such rates,
18 fees or charges from time to time.

19 (b) The rates, fees or charges shall be sufficient to all the
20 proper and reasonable costs and expenses of the acquisition
21 and construction of plants, machinery and works for the
22 collection, treatment, purification and disposal of sewage or
23 stormwater and the repair, alteration and extension of
24 existing sewer facilities or stormwater facilities, as may be
25 necessary to comply with such order of the Secretary of the
26 Department of Environmental Protection or the
27 Environmental Quality Board, and for the operation,
28 maintenance and repair of the entire works and system.

29 (c) The governing body shall create, by ordinance, a
30 sinking fund to accumulate and hold any part or all of the
31 proceeds derived from rates or charges until completion of
32 the construction, to be remitted to and administered by the
33 Municipal Bond Commission by expending and paying the
34 costs and expenses of construction and operation in the
35 manner as provided by said ordinance.

36 (d) After the completion of the construction, the rates,
37 fees or charges shall be sufficient in each year for the
38 payment of the proper and reasonable costs and expenses of
39 operation, maintenance, repair, replacement and extension,
40 from time to time, of the entire sewer and works or entire
41 stormwater works.

42 (e) No such rates, fees or charges shall be established
43 until after a public hearing, at which all the potential users of
44 the works and owners of property served or to be served
45 thereby and others shall have had an opportunity to be heard
46 concerning the proposed rates or charges.

47 (f) After introduction of the ordinance fixing rates, fees
48 or charges, and before the same is finally enacted, notice of
49 such hearing setting forth the proposed schedule of rates, fees
50 or charges shall be given by publication of notice as a Class
51 II-0 legal advertisement in compliance with the provisions of
52 article three, chapter fifty-nine of this code. The publication
53 area for such publication is the municipality. The first
54 publication shall be made at least ten days before the date
55 fixed therein for the hearing.

56 (g) After such hearing, which may be adjourned from
57 time to time, the ordinance establishing the rates, fees or
58 charges, either as originally introduced or as modified and
59 amended, may be passed and put into effect. A copy of the
60 schedule of the rates, fees and charges so established shall be
61 kept on file in the office of the sanitary board having charge
62 of the construction and operation of such works and in the
63 office of the clerk of the municipality. The schedule of rates,
64 fees and charges shall be open to inspection by all parties
65 interested. The rates, fees or charges established for any
66 class of users or property served shall be extended to cover
67 any additional premises thereafter served which fall within
68 the same class, without the necessity of any hearing or notice.

69 (h) Any change or readjustment of rates, fees or charges
70 may be made in the same manner as rates, fees or charges
71 were originally established as hereinbefore provided:
72 *Provided*, That if such change or readjustment be made
73 substantially pro rata, as to all classes of service, no hearing
74 or notice is required.

75 (i) If any rate, fee or charge is not paid within thirty days
76 after it is due, the amount thereof, together with a penalty of
77 ten percent and a reasonable attorney's fee, may be recovered
78 by the sanitary board of the municipality in a civil action in
79 the name of the municipality.

80 (j) Any municipality exercising the powers given herein
81 has the authority to construct, acquire, improve, equip,
82 operate, repair and maintain any plants, machinery or works
83 necessary to comply with the order of the Secretary of the
84 Department of Environmental Protection or the
85 Environmental Quality Board and the authority provided
86 herein to establish, maintain and collect rates, fees or charges
87 is an additional and alternative method of financing such
88 works and matters, and is independent of any other provision
89 of this article insofar as the article provides for or requires the
90 issuance of revenue bonds or the imposition of rates, fees and
91 charges in connection with the bonds: *Provided*, That except
92 for the method of financing such works and matters, the
93 construction, acquisition, improvement, equipment, custody,
94 operation, repair and maintenance of any plants, machinery
95 or works in compliance with an order of the Secretary of the
96 Department of Environmental Protection or the
97 Environmental Quality Board and the rights, powers and
98 duties of the municipality and the respective officers and
99 departments thereof, including the sanitary board, are
100 governed by the provisions of this article.

101 (k) The jurisdiction and authority provided by this section
102 does not extend to highways, road and drainage easements
103 and stormwater facilities constructed, owned or operated by
104 the West Virginia Division of Highways and no rates, fees or
105 charges for stormwater services or costs of compliance may
106 be assessed against highways, road and drainage easements
107 and/or stormwater facilities constructed, owned and/or
108 operated by the West Virginia Division of Highways.

109 (l) A municipality which has been designated by the
110 Environmental Protection Agency as an entity to serve a
111 West Virginia Separate Storm Sewer System community, as
112 defined in 40 C. F. R. §122.26, has the authority to enact
113 ordinances or regulations which allow for the issuance of
114 orders, the right to enter properties and the right to impose
115 reasonable fines and penalties regarding correction of
116 violations of municipal stormwater ordinances or regulations
117 within the municipal watershed served by the municipal
118 stormwater system, as long as such rules, regulations, fines
119 or actions are not contrary to any rules or orders of the Public
120 Service Commission.

121 (m) Notice of a violation of a municipal stormwater
122 ordinance or regulation shall be served in person to the
123 alleged violator or by certified mail, return receipt requested.
124 The notice shall state the nature of the violation, the potential
125 penalty, the action required to correct the violation and the
126 time limit for making the correction. Should a person, after
127 receipt of proper notice, fail to correct the violation of the
128 municipal stormwater ordinance or regulation, the
129 municipality may make or have made the corrections of the
130 violation and bring the party into compliance with the
131 applicable stormwater ordinance or regulation. The
132 municipality may collect the costs of correcting the violation
133 from the person by instituting a civil action, as long as such
134 actions are not contrary to any rules or orders of the Public
135 Service Commission.

136 (n) A municipality which has been designated by the
137 Environmental Protection Agency as an entity to serve a
138 West Virginia Separate Storm Sewer System community
139 shall prepare an annual report detailing the collection and
140 expenditure of rates, fees or charges and make it available for
141 public review at the place of business of the governing body
142 and the stormwater utility main office.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

1 (a) (1) The board may make, enact and enforce all
2 needful rules in connection with the acquisition, construction,
3 improvement, extension, management, maintenance,
4 operation, care, protection and the use of any public service
5 properties owned or controlled by the district. The board
6 shall establish rates, fees and charges for the services and
7 facilities it furnishes, which shall be sufficient at all times,
8 notwithstanding the provisions of any other law or laws, to
9 pay the cost of maintenance, operation and depreciation of
10 the public service properties and principal of and interest on
11 all bonds issued, other obligations incurred under the
12 provisions of this article and all reserve or other payments
13 provided for in the proceedings which authorized the
14 issuance of any bonds under this article. The schedule of the
15 rates, fees and charges may be based upon:

16 (A) The consumption of water or gas on premises
17 connected with the facilities, taking into consideration
18 domestic, commercial, industrial and public use of water and
19 gas;

20 (B) The number and kind of fixtures connected with the
21 facilities located on the various premises;

22 (C) The number of persons served by the facilities;

23 (D) Any combination of paragraphs (A), (B) and (C) of
24 this subdivision; or

25 (E) May be determined on any other basis or
26 classification which the board may determine to be fair and

27 reasonable, taking into consideration the location of the
28 premises served and the nature and extent of the services and
29 facilities furnished. However, no rates, fees or charges for
30 stormwater services may be assessed against highways, road
31 and drainage easements or stormwater facilities constructed,
32 owned or operated by the West Virginia Division of
33 Highways.

34 (2) Where water, sewer, stormwater or gas services, or
35 any combination thereof, are all furnished to any premises,
36 the schedule of charges may be billed as a single amount for
37 the aggregate of the charges. The board shall require all
38 users of services and facilities furnished by the district to
39 designate on every application for service whether the
40 applicant is a tenant or an owner of the premises to be served.
41 If the applicant is a tenant, he or she shall state the name and
42 address of the owner or owners of the premises to be served
43 by the district. Notwithstanding the provisions of section
44 eight, article three, chapter twenty-four of this code to the
45 contrary, all new applicants for service shall deposit the
46 greater of a sum equal to two twelfths of the average annual
47 usage of the applicant's specific customer class or fifty
48 dollars, with the district to secure the payment of service
49 rates, fees and charges in the event they become delinquent
50 as provided in this section. If a district provides both water
51 and sewer service, all new applicants for service shall deposit
52 the greater of a sum equal to two twelfths of the average
53 annual usage for water service or fifty dollars and the greater
54 of a sum equal to two twelfths of the average annual usage
55 for wastewater service of the applicant's specific customer
56 class or fifty dollars. In any case where a deposit is forfeited
57 to pay service rates, fees and charges which were delinquent
58 at the time of disconnection or termination of service, no
59 reconnection or reinstatement of service may be made by the
60 district until another deposit equal to the greater of a sum
61 equal to two twelfths of the average usage for the applicant's
62 specific customer class or fifty dollars has been remitted to

63 the district. After twelve months of prompt payment history,
64 the district shall return the deposit to the customer or credit
65 the customer's account at a rate as the Public Service
66 Commission may prescribe: *Provided*, That where the
67 customer is a tenant, the district is not required to return the
68 deposit until the time the tenant discontinues service with the
69 district. Whenever any rates, fees, rentals or charges for
70 services or facilities furnished remain unpaid for a period of
71 twenty days after the same become due and payable, the user
72 of the services and facilities provided is delinquent and the
73 user is liable at law until all rates, fees and charges are fully
74 paid. The board may, under reasonable rules promulgated by
75 the Public Service Commission, shut off and discontinue
76 water or gas services to all delinquent users of either water or
77 gas facilities, or both, ten days after the water or gas services
78 become delinquent.

79 (b) In the event that any publicly or privately owned
80 utility, city, incorporated town, other municipal corporation
81 or other public service district included within the district
82 owns and operates separately water facilities, sewer facilities
83 or stormwater facilities and the district owns and operates
84 another kind of facility either water or sewer, or both, as the
85 case may be, then the district and the publicly or privately
86 owned utility, city, incorporated town or other municipal
87 corporation or other public service district shall covenant and
88 contract with each other to shut off and discontinue the
89 supplying of water service for the nonpayment of sewer or
90 stormwater service fees and charges: *Provided*, That any
91 contracts entered into by a public service district pursuant to
92 this section shall be submitted to the Public Service
93 Commission for approval. Any public service district which
94 provides water and sewer service, water and stormwater
95 service or water, sewer and stormwater service has the right
96 to terminate water service for delinquency in payment of
97 water, sewer or stormwater bills. Where one public service
98 district is providing sewer service and another public service

99 district or a municipality included within the boundaries of
100 the sewer or stormwater district is providing water service
101 and the district providing sewer or stormwater service
102 experiences a delinquency in payment, the district or the
103 municipality included within the boundaries of the sewer or
104 stormwater district that is providing water service, upon the
105 request of the district providing sewer or stormwater service
106 to the delinquent account, shall terminate its water service to
107 the customer having the delinquent sewer or stormwater
108 account: *Provided, however,* That any termination of water
109 service must comply with all rules and orders of the Public
110 Service Commission.

111 (c) Any district furnishing sewer facilities within the
112 district may require, or may by petition to the circuit court of
113 the county in which the property is located, compel or may
114 require the Division of Health to compel all owners, tenants
115 or occupants of any houses, dwellings and buildings located
116 near any sewer facilities where sewage will flow by gravity
117 or be transported by other methods approved by the Division
118 of Health, including, but not limited to, vacuum and pressure
119 systems, approved under the provisions of section nine,
120 article one, chapter sixteen of this code, from the houses,
121 dwellings or buildings into the sewer facilities, to connect
122 with and use the sewer facilities and to cease the use of all
123 other means for the collection, treatment and disposal of
124 sewage and waste matters from the houses, dwellings and
125 buildings where there is gravity flow or transportation by any
126 other methods approved by the Division of Health, including,
127 but not limited to, vacuum and pressure systems, approved
128 under the provisions of section nine, article one, chapter
129 sixteen of this code and the houses, dwellings and buildings
130 can be adequately served by the sewer facilities of the district
131 and it is declared that the mandatory use of the sewer
132 facilities provided for in this paragraph is necessary and
133 essential for the health and welfare of the inhabitants and
134 residents of the districts and of the state. If the public service

135 district requires the property owner to connect with the sewer
136 facilities even when sewage from dwellings may not flow to
137 the main line by gravity and the property owner incurs costs
138 for any changes in the existing dwellings' exterior plumbing
139 in order to connect to the main sewer line, the Public Service
140 District Board shall authorize the district to pay all
141 reasonable costs for the changes in the exterior plumbing,
142 including, but not limited to, installation, operation,
143 maintenance and purchase of a pump or any other method
144 approved by the Division of Health. Maintenance and
145 operation costs for the extra installation should be reflected
146 in the users charge for approval of the Public Service
147 Commission. The circuit court shall adjudicate the merits of
148 the petition by summary hearing to be held not later than
149 thirty days after service of petition to the appropriate owners,
150 tenants or occupants.

151 (d) Whenever any district has made available sewer
152 facilities to any owner, tenant or occupant of any house,
153 dwelling or building located near the sewer facility and the
154 engineer for the district has certified that the sewer facilities
155 are available to and are adequate to serve the owner, tenant
156 or occupant and sewage will flow by gravity or be
157 transported by other methods approved by the Division of
158 Health from the house, dwelling or building into the sewer
159 facilities, the district may charge, and the owner, tenant or
160 occupant shall pay, the rates and charges for services
161 established under this article only after thirty-day notice of
162 the availability of the facilities has been received by the
163 owner, tenant or occupant. Rates and charges for sewage
164 services shall be based upon actual water consumption or the
165 average monthly water consumption based upon the owner's,
166 tenant's or occupant's specific customer class.

167 (e) The owner, tenant or occupant of any real property
168 may be determined and declared to be served by a stormwater
169 system only after each of the following conditions is met: (1)

170 The district has been designated by the Environmental
171 Protection Agency as an entity to serve a West Virginia
172 Separate Storm Sewer System community, as defined in 40
173 C. F. R. §122.26; (2) the district's authority has been
174 properly expanded to operate and maintain a stormwater
175 system; (3) the district has made available a stormwater
176 system where stormwater from the real property affects or
177 drains into the stormwater system; and (4) the real property
178 is located in the Municipal Separate Storm Sewer System's
179 designated service area. It is further hereby found,
180 determined and declared that the mandatory use of the
181 stormwater system is necessary and essential for the health
182 and welfare of the inhabitants and residents of the district and
183 of the state. The district may charge and the owner, tenant or
184 occupant shall pay the rates, fees and charges for stormwater
185 services established under this article only after thirty-day
186 notice of the availability of the stormwater system has been
187 received by the owner. An entity providing stormwater
188 service shall provide a tenant a report of the stormwater fee
189 charged for the entire property and, if appropriate, that
190 portion of the fee to be assessed to the tenant.

191 (f) All delinquent fees, rates and charges of the district
192 for either water facilities, sewer facilities, gas facilities or
193 stormwater systems or stormwater management programs are
194 liens on the premises served of equal dignity, rank and
195 priority with the lien on the premises of state, county, school
196 and municipal taxes. In addition to the other remedies
197 provided in this section, public service districts are granted a
198 deferral of filing fees or other fees and costs incidental to the
199 bringing and maintenance of an action in magistrate court for
200 the collection of delinquent water, sewer, stormwater or gas
201 bills. If the district collects the delinquent account, plus
202 reasonable costs, from its customer or other responsible
203 party, the district shall pay to the magistrate the normal filing
204 fee and reasonable costs which were previously deferred. In
205 addition, each public service district may exchange with
206 other public service districts a list of delinquent accounts:

207 *Provided*, That an owner of real property may not be held
208 liable for the delinquent rates or charges for services or
209 facilities of a tenant, nor may any lien attach to real property
210 for the reason of delinquent rates or charges for services or
211 facilities of a tenant of the real property, unless the owner has
212 contracted directly with the public service district to purchase
213 the services or facilities.

214 (g) Anything in this section to the contrary
215 notwithstanding, any establishment, as defined in section
216 three, article eleven, chapter twenty-two of this code, now or
217 hereafter operating its own sewage disposal system pursuant
218 to a permit issued by the Department of Environmental
219 Protection, as prescribed by section eleven of said article, is
220 exempt from the provisions of this section.

221 (h) A public service district which has been designated by
222 the Environmental Protection Agency as an entity to serve a
223 West Virginia Separate Storm Sewer System community
224 shall prepare an annual report detailing the collection and
225 expenditure of rates, fees or charges and make it available for
226 public review at the place of business of the governing body
227 and the stormwater utility main office.



CHAPTER 203

**(S.B. 466 - By Senators Unger, Plymale, Prezioso, Foster,
Jenkins, Stollings and Hunter)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §22C-1-3, §22C-1-6 and §22C-1-16
of the Code of West Virginia, 1931, as amended, all relating to
the Water Development Authority; defining terms; providing

that stormwater systems may qualify as water development projects; and authorizing the Water Development Authority to administer the Dam Safety Rehabilitation Revolving Fund Loan Program.

Be it enacted by the Legislature of West Virginia:

That §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-3. Definitions.

§22C-1-6. Powers, duties and responsibilities of authority generally.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

§22C-1-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) “Authority” means the Water Development Authority
4 provided for in section four of this article, the duties, powers,
5 responsibilities and functions of which are specified in this
6 article.

7 (2) “Beneficial use” means a use of water by a person or
8 by the general public that is consistent with the public
9 interest, health and welfare in utilizing the water resources of
10 this state, including, but not limited to, domestic, agricultural,
11 irrigation, industrial, manufacturing, mining, power, public,
12 sanitary, fish and wildlife, state, county, municipal,
13 navigational, recreational, aesthetic and scenic use.

14 (3) “Board” means the Water Development Authority
15 Board provided for in section four of this article, which shall
16 manage and control the Water Development Authority.

17 (4) “Bond” or “water development revenue bond” means
18 a revenue bond, note or other evidence of indebtedness
19 issued by the Water Development Authority to effect the
20 intents and purposes of this article.

21 (5) “Construction” includes reconstruction, enlargement,
22 improvement and providing furnishings or equipment.

23 (6) “Cost” means, as applied to water development
24 projects, the cost of their acquisition and construction; the
25 cost of acquisition of all land, rights-of-way, property rights,
26 easements, franchise rights and interests required by the
27 authority for such acquisition and construction; the cost of
28 demolishing or removing any buildings or structures on land
29 so acquired, including the cost of acquiring any lands to
30 which such buildings or structures may be moved; the cost of
31 acquiring or constructing and equipping a principal office and
32 suboffices of the authority; the cost of diverting highways,
33 interchange of highways; access roads to private property,
34 including the cost of land or easements therefor; the cost of
35 all machinery, furnishings and equipment; all financing
36 charges and interest prior to and during construction and for
37 no more than eighteen months after completion of
38 construction; the cost of all engineering services and all
39 expenses of research and development with respect to public
40 water facilities, stormwater systems or wastewater facilities;
41 the cost of all legal services and expenses; the cost of all
42 plans, specifications, surveys and estimates of cost and
43 revenues; all working capital and other expenses necessary or
44 incident to determining the feasibility or practicability of
45 acquiring or constructing any such project; all administrative
46 expenses and such other expenses as may be necessary or
47 incident to the acquisition or construction of the project; the

48 financing of such acquisition or construction, including the
49 amount authorized in the resolution of the authority providing
50 for the issuance of water development revenue bonds to be
51 paid into any special funds from the proceeds of such bonds;
52 and the financing of the placing of any such project in
53 operation. Any obligation or expenses incurred by any
54 governmental agency, with the approval of the authority, for
55 surveys, borings, preparation of plans and specifications and
56 other engineering services in connection with the acquisition
57 or construction of a project are a part of the cost of such
58 project and shall be reimbursed out of the proceeds of loans
59 or water development revenue bonds as authorized by the
60 provisions of this article.

61 (7) "Establishment" means an industrial establishment,
62 mill, factory, tannery, paper or pulp mill, mine, colliery,
63 breaker or mineral processing operation, quarry, refinery,
64 well and each and every industry or plant or works or activity
65 in the operation or process of which industrial wastes or other
66 wastes are produced.

67 (8) "Governmental agency" means the state government
68 or any agency, department, division or unit thereof; counties;
69 municipalities; watershed improvement districts; soil
70 conservation districts; sanitary districts; public service
71 districts; drainage districts; regional governmental authorities
72 and any other governmental agency, entity, political
73 subdivision, public corporation or agency having the
74 authority to acquire, construct or operate public water
75 facilities, stormwater systems or wastewater facilities; the
76 United States government or any agency, department,
77 division or unit thereof; and any agency, commission or
78 authority established pursuant to an interstate compact or
79 agreement.

80 (9) "Industrial wastes" means any liquid, gaseous, solid
81 or other waste substance or any combination thereof,

82 resulting from or incidental to any process of industry,
83 manufacturing, trade or business, or from or incidental to the
84 development, processing or recovery of any natural
85 resources; and the admixture with such industrial wastes of
86 sewage or other wastes, as defined in this section, are also
87 industrial wastes.

88 (10) "Other wastes" means garbage, refuse, decayed
89 wood, sawdust, shavings, bark and other wood debris and
90 residues, sand, lime, cinders, ashes, offal, night soil, silt, oil,
91 tar, dyestuffs, acids, chemicals and all other materials or
92 substances not sewage or industrial wastes which may cause
93 or might reasonably be expected to cause or to contribute to
94 the pollution of any of the waters of this state.

95 (11) "Owner" includes all persons, copartnerships or
96 governmental agencies having any title or interest in any
97 property rights, easements and interests authorized to be
98 acquired by this article.

99 (12) "Person" means any public or private corporation,
100 institution, association, firm or company organized or
101 existing under the laws of this or any other state or country;
102 the United States or the State of West Virginia; any federal or
103 state governmental agency; political subdivision; county
104 commission; municipality; industry; sanitary district; public
105 service district; drainage district; soil conservation district;
106 watershed improvement district; partnership; trust; estate;
107 person or individual; group of persons or individuals acting
108 individually or as a group or any other legal entity whatever.

109 (13) "Pollution" means: (a) The discharge, release,
110 escape, deposit or disposition, directly or indirectly, of
111 treated or untreated sewage, industrial wastes or other wastes,
112 of whatever kind or character, in or near any waters of the
113 state, in such condition, manner or quantity, as does, will or
114 is likely to: (1) contaminate or substantially contribute to the

115 contamination of any of such waters; or (2) alter or
116 substantially contribute to the alteration of the physical,
117 chemical or biological properties of any of such waters, if
118 such contamination or alteration, or the resulting
119 contamination or alteration where a person only contributes
120 thereto, is to such an extent as to make any of such waters: (i)
121 Directly or indirectly harmful, detrimental or injurious to the
122 public health, safety and welfare; or (ii) directly or indirectly
123 detrimental to existing animal, bird, fish, aquatic or plant life;
124 or (iii) unsuitable for present or future domestic, commercial,
125 industrial, agricultural, recreational, scenic or other legitimate
126 uses; and also means (b) the discharge, release, escape,
127 deposit or disposition, directly or indirectly, of treated or
128 untreated sewage, industrial wastes or other wastes, of
129 whatever kind or character, in or near any waters of the state
130 in such condition, manner or quantity, as does, will or is
131 likely to reduce the quality of the waters of the state below
132 the standards established therefor by the United States or any
133 department, agency, board or commission of this state
134 authorized to establish such standards.

135 (14) "Project" or "water development project" means any
136 public water facility, stormwater system or wastewater
137 facility, the acquisition or construction of which is
138 authorized, in whole or in part, by the Water Development
139 Authority or the acquisition or construction of which is
140 financed, in whole or in part, from funds made available by
141 grant or loan by, or through, the authority as provided in this
142 article, including facilities, the acquisition or construction of
143 which is authorized, in whole or in part, by the Water
144 Development Authority or the acquisition or construction of
145 which is financed, in whole or in part, from funds made
146 available by grant or loan by, or through, the authority as
147 provided in this article, including all buildings and facilities
148 which the authority deems necessary for the operation of the
149 project, together with all property, rights, easements and
150 interest which may be required for the operation of the

151 project, but excluding all buildings and facilities used to
152 produce electricity other than electricity for consumption by
153 the authority in the operation and maintenance of the project.

154 (15) “Public roads” mean all public highways, roads and
155 streets in this state, whether maintained by the state, county,
156 municipality or other political subdivision.

157 (16) “Public utility facilities” means public utility plants
158 or installations and includes tracks, pipes, mains, conduits,
159 cables, wires, towers, poles and other equipment and
160 appliances of any public utility.

161 (17) “Revenue” means any money or thing of value
162 collected by, or paid to, the Water Development Authority as
163 rent, use or service fee or charge for use of, or in connection
164 with, any water development project, or as principal of or
165 interest, charges or other fees on loans, or any other
166 collections on loans made by the Water Development
167 Authority to governmental agencies to finance, in whole or
168 in part, the acquisition or construction of any water
169 development project or projects or other money or property
170 which is received and may be expended for or pledged as
171 revenues pursuant to this article.

172 (18) “Sewage” means water-carried human or animal
173 wastes from residences, buildings, industrial establishments
174 or other places, together with such groundwater infiltration
175 and surface waters as may be present.

176 (19) “Stormwater system” means a stormwater system in
177 its entirety or any integral part thereof used to collect, control
178 or dispose of stormwater and an associated stormwater
179 management program. It includes all facilities, structures and
180 natural water courses used for collecting and conducting
181 stormwater to, through and from drainage areas to the points
182 of final outlet, including, but not limited to, any and all of the

183 following: Inlets, conduits, corals, outlets, channels, ponds,
184 drainage ways, easements, water quality facilities, catch
185 basins, ditches, streams, gulches, flumes, culverts, siphons,
186 retention or detention basins, dams, floodwalls, pipes, flood
187 control systems, levies and pumping stations. The term
188 “stormwater system” does not include highways, road and
189 drainage easements or stormwater facilities constructed,
190 owned or operated by the West Virginia Division of
191 Highways.

192 (20) “Stormwater management program” means those
193 activities associated with the management, operation and
194 maintenance and control of stormwater and stormwater
195 systems and includes, but is not limited to, public education,
196 stormwater and surface runoff water quality improvement,
197 mapping, planning, flood control, inspection, enforcement
198 and any other activities required by state and federal law.
199 The term “stormwater management program” does not
200 include those activities associated with the management,
201 operation, maintenance and control of highways, road and
202 drainage easements or stormwater facilities constructed,
203 owned or operated by the West Virginia Division of
204 Highways without the express agreement of the
205 Commissioner of the Division of Highways.

206 (21) “Water resources”, “water” or “waters” means any
207 and all water on or beneath the surface of the ground,
208 whether percolating, standing, diffused or flowing, wholly or
209 partially within this state, or bordering this state and within
210 its jurisdiction, and includes, without limiting the generality
211 of the foregoing, natural or artificial lakes, rivers, streams,
212 creeks, branches, brooks, ponds (except farm ponds,
213 industrial settling basins and ponds and water treatment
214 facilities), impounding reservoirs, springs, wells and
215 watercourses.

216 (22) “Wastewater” means any water containing sewage,
217 industrial wastes or other wastes or contaminants derived

218 from the prior use of such water and includes, without
219 limiting the generality of the foregoing, surface water of the
220 type storm sewers are designed to collect and dispose of.

221 (23) “Wastewater facilities” means facilities for the
222 purpose of treating, neutralizing, disposing of, stabilizing,
223 cooling, segregating or holding wastewater, including,
224 without limiting the generality of the foregoing, facilities for
225 the treatment and disposal of sewage, industrial wastes or
226 other wastes, waste water and the residue thereof; facilities
227 for the temporary or permanent impoundment of wastewater,
228 both surface and underground; and sanitary sewers or other
229 collection systems, whether on the surface or underground,
230 designed to transport wastewater together with the equipment
231 and furnishings thereof and their appurtenances and systems,
232 whether on the surface or underground, including force mains
233 and pumping facilities therefor.

234 (24) “Water facility” means all facilities, land and
235 equipment used for the collection of water, both surface and
236 underground, transportation of water, treatment of water and
237 distribution of water all for the purpose of providing potable,
238 sanitary water suitable for human consumption and use.

§22C-1-6. Powers, duties and responsibilities of authority generally.

1 The Water Development Authority has and may exercise
2 all powers necessary or appropriate to carry out and
3 effectuate its corporate purpose. The authority has the power
4 and capacity to:

5 (1) Adopt and, from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its affairs
7 and the conduct of its business and rules to implement and
8 make effective its powers and duties, such rules to be
9 promulgated in accordance with the provisions of chapter
10 twenty-nine-a of this code.

- 11 (2) Adopt an official seal.
- 12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.
- 14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name and particularly to enforce the
16 obligations and covenants made under sections nine, ten and
17 sixteen of this article. Any actions against the authority shall
18 be brought in the circuit court of Kanawha County in which
19 the principal office of the authority shall be located.
- 20 (5) Make loans and grants to governmental agencies for
21 the acquisition or construction of water development projects
22 by any such governmental agency and, in accordance with
23 the provisions of chapter twenty-nine-a of this code, adopt
24 rules and procedures for making such loans and grants.
- 25 (6) Acquire, construct, reconstruct, enlarge, improve,
26 furnish, equip, maintain, repair, operate, lease or rent to, or
27 contract for operation by a governmental agency or person,
28 water development projects and, in accordance with the
29 provisions of chapter twenty-nine-a of this code, adopt rules
30 for the use of such projects.
- 31 (7) Make available the use or services of any water
32 development project to one or more persons, one or more
33 governmental agencies or any combination thereof.
- 34 (8) Issue water development revenue bonds and notes and
35 water development revenue refunding bonds of the state,
36 payable solely from revenues as provided in section nine of
37 this article unless the bonds are refunded by refunding bonds,
38 for the purpose of paying all or any part of the cost of, or
39 financing by loans to governmental agencies, one or more
40 water development projects or parts thereof.

41 (9) Acquire by gift or purchase, hold and dispose of real
42 and personal property in the exercise of its powers and the
43 performance of its duties as set forth in this article.

44 (10) Acquire in the name of the state, by purchase or
45 otherwise, on such terms and in such manner as it deems
46 proper, or by the exercise of the right of eminent domain in
47 the manner provided in chapter fifty-four of this code, such
48 public or private lands, or parts thereof or rights therein,
49 rights-of-way, property, rights, easements and interests it
50 deems necessary for carrying out the provisions of this
51 article, but excluding the acquisition by the exercise of the
52 right of eminent domain of any public water facilities,
53 stormwater systems or wastewater facilities, operated under
54 permits issued pursuant to the provisions of article eleven,
55 chapter twenty-two of this code and owned by any person or
56 governmental agency, and compensation shall be paid for
57 public or private lands so taken.

58 (11) Make and enter into all contracts and agreements
59 and execute all instruments necessary or incidental to the
60 performance of its duties and the execution of its powers.
61 When the cost under any such contract or agreement, other
62 than compensation for personal services, involves an
63 expenditure of more than two thousand dollars, the authority
64 shall make a written contract with the lowest responsible
65 bidder after public notice published as a Class II legal
66 advertisement in compliance with the provisions of article
67 three, chapter fifty-nine of this code, the publication area for
68 such publication to be the county wherein the work is to be
69 performed or which is affected by the contract, which notice
70 shall state the general character of the work and the general
71 character of the materials to be furnished, the place where
72 plans and specifications therefor may be examined and the
73 time and place of receiving bids, but a contract or lease for
74 the operation of a water development project constructed and
75 owned by the authority or an agreement for cooperation in

76 the acquisition or construction of a water development
77 project pursuant to section sixteen of this article is not subject
78 to the foregoing requirements and the authority may enter
79 into such contract or lease or such agreement pursuant to
80 negotiation and upon such terms and conditions and for such
81 period as it finds to be reasonable and proper under the
82 circumstances and in the best interests of proper operation or
83 of efficient acquisition or construction of such project. The
84 authority may reject any and all bids. A bond with good and
85 sufficient surety, approved by the authority, is required of all
86 contractors in an amount equal to at least fifty percent of the
87 contract price, conditioned upon the faithful performance of
88 the contract.

89 (12) Employ managers, superintendents and other
90 employees, who are covered by the state civil service system,
91 and retain or contract with consulting engineers, financial
92 consultants, accounting experts, architects, attorneys and
93 such other consultants and independent contractors as are
94 necessary in its judgment to carry out the provisions of this
95 article and fix the compensation or fees thereof. All expenses
96 thereof are payable solely from the proceeds of water
97 development revenue bonds or notes issued by the authority,
98 from revenues and from funds appropriated for such purpose
99 by the Legislature.

100 (13) Receive and accept from any federal agency, subject
101 to the approval of the Governor, grants for or in aid of the
102 construction of any water development project or for research
103 and development with respect to public water facilities,
104 stormwater systems or wastewater facilities and receive and
105 accept aid or contributions from any source of money,
106 property, labor or other things of value to be held, used and
107 applied only for the purposes for which such grants and
108 contributions are made.

109 (14) Engage in research and development with respect to
110 public water facilities, stormwater systems or wastewater
111 facilities.

112 (15) Purchase property coverage and liability insurance
113 for any water development project and for the principal office
114 and suboffices of the authority, insurance protecting the
115 authority and its officers and employees against liability, if
116 any, for damage to property or injury to or death of persons
117 arising from its operations and any other insurance the
118 authority may agree to provide under any resolution
119 authorizing the issuance of water development revenue bonds
120 or in any trust agreement securing the same.

121 (16) Charge, alter and collect rentals and other charges
122 for the use or services of any water development project as
123 provided in this article and charge and collect reasonable
124 interest, fees and charges in connection with the making and
125 servicing of loans to governmental agencies in the
126 furtherance of the purposes of this article.

127 (17) Establish or increase reserves from moneys received
128 or to be received by the authority to secure or to pay the
129 principal of and interest on the bonds and notes issued by the
130 authority pursuant to this article.

131 (18) Administer on behalf of the Department of
132 Environmental Protection the Dam Safety Rehabilitation
133 Revolving Fund Loan Program pursuant to the provisions of
134 article fourteen of chapter twenty-two of this code. Revenues
135 or moneys designated by this code or otherwise appropriated
136 for use by the authority pursuant to the provisions of this
137 article may not be used for the Dam Safety Rehabilitation
138 Revolving Fund Loan Program and moneys in the Dam
139 Safety Rehabilitation Revolving Fund shall be kept separate
140 from all revenues and moneys of the authority.

141 (19) Do all acts necessary and proper to carry out the
142 powers expressly granted to the authority in this article.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

1 This section applies to any water development project or
2 projects which are owned, in whole or in part, by the
3 authority. The authority may charge, alter and collect rentals
4 or other charges for the use or services of any water
5 development project, and contract in the manner provided by
6 this section with one or more persons, one or more
7 governmental agencies, or any combination thereof, desiring
8 the use or services thereof, and fix the terms, conditions,
9 rentals or other charges for such use or services. Such rentals
10 or other charges are not subject to supervision or regulation
11 by any other authority, department, commission, board,
12 bureau or agency of the state and such contract may provide
13 for acquisition by such person or governmental agency of all
14 or any part of such water development project for such
15 consideration payable over the period of the contract or
16 otherwise as the authority in its sole discretion determines to
17 be appropriate, but subject to the provisions of any resolution
18 authorizing the issuance of water development revenue bonds
19 or notes or water development revenue refunding bonds of
20 the authority or any trust agreement securing the same. Any
21 governmental agency which has power to construct, operate
22 and maintain public water facilities, stormwater systems or
23 wastewater facilities may enter into a contract or lease with
24 the authority whereby the use or services of any water
25 development project of the authority will be made available
26 to such governmental agency and pay for such use or services
27 such rentals or other charges as may be agreed to by such
28 governmental agency and the authority.

29 Any governmental agency or agencies or combination
30 thereof may cooperate with the authority in the acquisition or
31 construction of a water development project and shall enter
32 into such agreements with the authority as are necessary, with
33 a view to effective cooperative action and safeguarding of the
34 respective interests of the parties thereto, which agreements
35 shall provide for such contributions by the parties thereto in
36 such proportion as may be agreed upon and such other terms
37 as may be mutually satisfactory to the parties, including,
38 without limitation, the authorization of the construction of the
39 project by one of the parties acting as agent for all of the
40 parties and the ownership and control of the project by the
41 authority to the extent necessary or appropriate for purposes
42 of the issuance of water development revenue bonds by the
43 authority. Any governmental agency may provide such
44 contribution as is required under such agreements by the
45 appropriation of money or, if authorized by a favorable vote
46 of the electors to issue bonds or notes or levy taxes or
47 assessments and issue notes or bonds in anticipation of the
48 collection thereof, by the issuance of bonds or notes or by the
49 levying of taxes or assessments and the issuance of bonds or
50 notes in anticipation of the collection thereof and by the
51 payment of such appropriated money or the proceeds of such
52 bonds or notes to the authority pursuant to such agreements.

53 Any governmental agency, pursuant to a favorable vote
54 of the electors in an election held for the purpose of issuing
55 bonds to provide funds to acquire, construct or equip, or
56 provide real estate and interests in real estate for a public
57 water facility, stormwater system or wastewater facility,
58 whether or not the governmental agency at the time of such
59 an election had the authority to pay the proceeds from such
60 bonds or notes issued in anticipation thereof to the authority
61 as provided in this section, may issue such bonds or notes in
62 anticipation of the issuance thereof and pay the proceeds
63 thereof to the authority in accordance with an agreement
64 between such governmental agency and the authority:

65 *Provided*, That the legislative authority of the governmental
66 agency finds and determines that the water development
67 project to be acquired or constructed by the authority in
68 cooperation with such governmental agency will serve the
69 same public purpose and meet substantially the same public
70 need as the facility otherwise proposed to be acquired or
71 constructed by the governmental agency with the proceeds of
72 such bonds or notes.

CHAPTER 204

**(Com. Sub. for S.B. 501 - By Senators Fanning, Kessler, Foster,
Bailey, Wells and McKenzie)**

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §20-13-3, §20-13-4, §20-13-5 and
§20-13-6 of the Code of West Virginia, 1931, as amended, all
relating to the Stream Partners Program; and eliminating
provisions relating to the Stream Partners Program Fund.

Be it enacted by the Legislature of West Virginia:

That §20-13-3, §20-13-4, §20-13-5 and §20-13-6 of the Code
of West Virginia, 1931, as amended, be amended and reenacted to
read as follows:

ARTICLE 13. WEST VIRGINIA STREAM PARTNERS PROGRAM.

§20-13-3. West Virginia Stream Partners Program created; executive committee identified;
program coordination.

§20-13-4. Stream Partners Program.

§20-13-5. Grant qualifications.

§20-13-6. Administering agency support.

§20-13-3. West Virginia Stream Partners Program created; executive committee identified; program coordination.

1 Subject to annual appropriation of the Legislature, the
2 program shall be jointly administered by the Division of
3 Natural Resources, the Department of Environmental
4 Protection, the Division of Forestry and the West Virginia
5 State Soil Conservation Agency. The director, secretary or
6 commissioner of each of these administering agencies, or his
7 or her designee, collectively constitute an executive
8 committee to oversee the program. The Governor shall
9 designate a member of the executive committee to serve as
10 chair. The committee may designate a staff member from the
11 existing staff of one of the administering agencies to
12 coordinate the program on behalf of the executive committee.

§20-13-4. Stream Partners Program.

1 The West Virginia Stream Partners Program shall
2 provide grants to groups comprised of representatives located
3 in the immediate area of the stream or streams being
4 addressed that are dedicated to achieving the purpose stated
5 in section two of this article. The grants shall be awarded by
6 consensus of the executive committee in accordance with
7 legislative rules promulgated by the Department of
8 Environmental Protection pursuant to article three, chapter
9 twenty-nine-a of this code. Each grant shall be matched by
10 the group of representatives with cash or in-kind services in,
11 at least, an amount equal to twenty percent of the grant:
12 *Provided*, That no grant shall exceed the amount of five
13 thousand dollars.

§20-13-5. Grant qualifications.

1 In order to qualify for grants from the West Virginia
2 Stream Partners Program, a group of representatives located

3 in the immediate area of a stream or streams which qualify
4 under section two of this article shall apply to the executive
5 committee in accordance with the following requirements
6 and in accordance with any other provision of this article or
7 any applicable rule. The application shall:

8 (a) Identify the stream or streams to be restored,
9 protected, utilized or enhanced;

10 (b) Identify the representatives of groups applying for
11 funds and the financially responsible entity to receive funds,
12 all from the geographic area immediately surrounding the
13 stream or streams. These identified individuals shall
14 represent the general public, industry, environmental groups,
15 sportsmen, forestry, agriculture, local government, tourism,
16 recreation and affected landowners, all located in the
17 geographic area immediately surrounding the stream or
18 streams;

19 (c) Demonstrate an ability to achieve, within the grant
20 year, a specific improvement project that enhances the
21 identified stream or streams; and

22 (d) Evidence a commitment to educate the citizens in the
23 area of the identified stream or streams about the benefits of
24 restoring, protecting and enhancing the stream or streams in
25 a responsible manner.

§20-13-6. Administering agency support.

1 The administering agencies may provide staff and other
2 resources as necessary to address the technical assistance and
3 administrative needs of the West Virginia Stream Partners
4 Program. This support may include the utilization of
5 resources and formulation of policies to achieve the purpose
6 set forth in section two of this article.

CHAPTER 205

(Com. Sub. for S.B. 565 - By Senators Sypolt, Bailey and Love)

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §11-3-2a of the Code of West Virginia, 1931, as amended, relating to notices of increased assessment; and requiring notice of an increase in the assessed valuation of real property only if the increase is one thousand dollars or more.

Be it enacted by the Legislature of West Virginia:

That §11-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice.

1 (a) If the assessor determines the assessed valuation of
2 any item of real property is more than ten percent greater
3 than the valuation assessed for that item in the last tax year,
4 the increase is one thousand dollars or more and the increase
5 is entered in the property books as provided in section
6 nineteen of this article, the assessor shall give notice of the
7 increase to the person assessed or the person controlling the
8 property as provided in section two of this article. The notice
9 shall be given at least fifteen days prior to the first meeting in
10 February at which the county commission meets as the board
11 of equalization and review for that tax year and advise the

12 person assessed or the person controlling the property of his
13 or her right to appear and seek an adjustment in the
14 assessment. The notice shall be made by first class United
15 States postage mailed to the address of the person assessed or
16 the person controlling the property for payment of tax on the
17 item in the previous year, unless there was a general increase
18 of the entire valuation in any one or more districts in which
19 case the notice shall be by publication of the notice by a
20 Class II-0 legal advertisement in compliance with the
21 provisions of article three, chapter fifty-nine of this code.
22 The area for the publication is the county. The requirement
23 of notice under this section is satisfied and waived if personal
24 notice of the increase is shown by:

25 (1) The taxpayer having signed the assessment form after
26 it had been completed showing the increase;

27 (2) Notice was given as provided in section three-a of this
28 article; or

29 (3) The person so assessed executing acknowledgment of
30 the notice of the increase.

31 (b) During the initial reappraisal of all property under
32 section seven, article one-c of this chapter, the tax
33 commissioner and each county assessor shall send every
34 person owning or controlling property appraised by the tax
35 commissioner or the county assessor, as the case may be, a
36 pamphlet which explains the reappraisal process and its
37 equalization goal in a detailed yet informal manner. The
38 property valuation training and procedures commission,
39 created under section three, article one-c of this chapter, shall
40 design the pamphlet for use in all counties while allowing
41 individual county information to be included if it determines
42 that the information would improve understanding of the
43 process.

CHAPTER 206**(S.B. 101 - By Senator Minard)**

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to providing an exemption from property taxation for property used by nonprofit corporations for providing electricity to residents of this state.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.**§11-3-9. Property exempt from taxation.**

1 (a) All property, real and personal, described in this
2 subsection, and to the extent limited by this section, is
3 exempt from taxation:

4 (1) Property belonging to the United States, other than
5 property permitted by the United States to be taxed under
6 state law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county, district,
9 city, village or town in this state and used for public
10 purposes;

11 (4) Property located in this state belonging to any city,
12 town, village, county or any other political subdivision of
13 another state and used for public purposes;

14 (5) Property used exclusively for divine worship;

15 (6) Parsonages and the household goods and furniture
16 pertaining thereto;

17 (7) Mortgages, bonds and other evidence of indebtedness
18 in the hands of bona fide owners and holders hereafter issued
19 and sold by churches and religious societies for the purposes
20 of securing money to be used in the erection of church
21 buildings used exclusively for divine worship or for the
22 purpose of paying indebtedness thereon;

23 (8) Cemeteries;

24 (9) Property belonging to, or held in trust for, colleges,
25 seminaries, academies and free schools, if used for
26 educational, literary or scientific purposes, including books,
27 apparatus, annuities and furniture;

28 (10) Property belonging to, or held in trust for, colleges
29 or universities located in West Virginia, or any public or
30 private nonprofit foundation or corporation which receives
31 contributions exclusively for such college or university, if the
32 property or dividends, interest, rents or royalties derived
33 therefrom are used or devoted to educational purposes of
34 such college or university;

35 (11) Public and family libraries;

36 (12) Property used for charitable purposes and not held
37 or leased out for profit;

38 (13) Property used for the public purposes of distributing
39 electricity, water or natural gas or providing sewer service by
40 a duly chartered nonprofit corporation when such property is
41 not held, leased out or used for profit;

42 (14) Property used for area economic development
43 purposes by nonprofit corporations when the property is not
44 leased out for profit;

45 (15) All real estate not exceeding one acre in extent, and
46 the buildings on the real estate, used exclusively by any
47 college or university society as a literary hall, or as a
48 dormitory or clubroom, if not used with a view to profit,
49 including, but not limited to, property owned by a fraternity
50 or sorority organization affiliated with a university or college
51 or property owned by a nonprofit housing corporation or
52 similar entity on behalf of a fraternity or sorority organization
53 affiliated with a university or college, when the property is
54 used as residential accommodations or as a dormitory for
55 members of the organization;

56 (16) All property belonging to benevolent associations
57 not conducted for private profit;

58 (17) Property belonging to any public institution for the
59 education of the deaf, dumb or blind or any hospital not held
60 or leased out for profit;

61 (18) Houses of refuge and mental health facility or
62 orphanage;

63 (19) Homes for children or for the aged, friendless or
64 infirm not conducted for private profit;

65 (20) Fire engines and implements for extinguishing fires,
66 and property used exclusively for the safekeeping thereof,
67 and for the meeting of fire companies;

68 (21) All property on hand to be used in the subsistence of
69 livestock on hand at the commencement of the assessment
70 year;

71 (22) Household goods to the value of two hundred
72 dollars, whether or not held or used for profit;

73 (23) Bank deposits and money;

74 (24) Household goods, which for purposes of this section
75 means only personal property and household goods
76 commonly found within the house and items used to care for
77 the house and its surrounding property, when not held or used
78 for profit;

79 (25) Personal effects, which for purposes of this section
80 means only articles and items of personal property commonly
81 worn on or about the human body or carried by a person and
82 normally thought to be associated with the person when not
83 held or used for profit;

84 (26) Dead victuals laid away for family use;

85 (27) All property belonging to the state, any county,
86 district, city, village, town or other political subdivision or
87 any state college or university which is subject to a lease
88 purchase agreement and which provides that, during the term
89 of the lease purchase agreement, title to the leased property
90 rests in the lessee so long as lessee is not in default or shall
91 not have terminated the lease as to the property;

92 (28) Personal property, including vehicles that qualify for
93 a farm use exemption certificate pursuant to section two,
94 article three, chapter seventeen-a of this code and livestock,
95 employed exclusively in agriculture, as defined in article ten,
96 section one of the West Virginia Constitution: *Provided*, That
97 this exemption only applies in the case of such personal

98 property used on a farm or farming operation that annually
99 produces for sale agricultural products, as defined in rules of
100 the Tax Commissioner; and

101 (29) Any other property or security exempted by any
102 other provision of law.

103 (b) Notwithstanding the provisions of subsection (a) of
104 this section, no property is exempt from taxation which has
105 been purchased or procured for the purpose of evading
106 taxation whether temporarily holding the same over the first
107 day of the assessment year or otherwise.

108 (c) Real property which is exempt from taxation by
109 subsection (a) of this section shall be entered upon the
110 assessor's books, together with the true and actual value
111 thereof, but no taxes may be levied upon the property or
112 extended upon the assessor's books.

113 (d) Notwithstanding any other provisions of this section,
114 this section does not exempt from taxation any property
115 owned by, or held in trust for, educational, literary, scientific,
116 religious or other charitable corporations or organizations,
117 including any public or private nonprofit foundation or
118 corporation existing for the support of any college or
119 university located in West Virginia, unless such property, or
120 the dividends, interest, rents or royalties derived therefrom,
121 is used primarily and immediately for the purposes of the
122 corporations or organizations.

123 (e) The Tax Commissioner shall, by issuance of rules,
124 provide each assessor with guidelines to ensure uniform
125 assessment practices statewide to effect the intent of this
126 section.

127 (f) Inasmuch as there is litigation pending regarding
128 application of this section to property held by fraternities and

129 sororities, amendments to this section enacted in the year one
130 thousand nine hundred ninety-eight shall apply to all cases
131 and controversies pending on the date of such enactment.

132 (g) The amendment to subdivision (27), subsection (a) of
133 this section, passed during the two thousand five regular
134 session of the Legislature, shall apply to all applicable lease
135 purchase agreements in existence upon the effective date of
136 the amendment.

CHAPTER 207

**(Com. Sub. for H.B. 4088 - By Delegates Ireland, Anderson,
Romine, Hartman, Stemple, C. Miller, Blair, Evans and Williams)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §11-6C-1, §11-6C-2, §11-6C-3,
§11-6C-4 and §11-6C-5 of the Code of West Virginia, 1931, as
amended, all relating to a change in the calculation of farm
equipment dealers inventory to an average monthly basis rather
than the inventory as of the first day of July.

Be it enacted by the Legislature of West Virginia:

That §11-6C-1, §11-6C-2, §11-6C-3, §11-6C-4 and §11-6C-5
of the Code of West Virginia, 1931, as amended, be amended and
reenacted, all to read as follows:

**ARTICLE 6C. SPECIAL METHOD FOR APPRAISING
DEALER VEHICLE INVENTORY.**

- §11-6C-1. Inventory included within scope of article.
- §11-6C-2. Method for determining market value of dealer vehicle inventory, dealer motorboat inventory, farm equipment dealers inventory, daily passenger rental car inventory and house trailer and factory-built homes inventory.
- §11-6C-3. Owner to file return estimating market value.
- §11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, farm equipment dealers inventory or house trailer and factory-built homes inventory.
- §11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

§11-6C-1. Inventory included within scope of article.

1 Notwithstanding any other provisions of law, inventory
2 of vehicles, as that term is defined in section one, article one,
3 chapter seventeen-b of this code that is held for sale or lease
4 by new or used vehicle dealers licensed under the provisions
5 of article six, chapter seventeen-a of this code, or held for
6 sale or lease by daily passenger car rental businesses licensed
7 under the provisions of article six-d of said chapter, inventory
8 of motorboats, as that term is defined in section one, article
9 six of said chapter, that is held for sale or lease by a
10 recreational vehicle dealer, as that term is defined in said
11 section, that is licensed under the authority of section three,
12 article six of said chapter, and farm equipment dealers'
13 inventory, consisting of individual units of personal new or
14 used property, each unit of which, upon its sale to a retail
15 purchaser, must, as a matter of law, be titled in the name of
16 the retail purchaser and registered with the Division of Motor
17 Vehicles, shall be appraised for assessment purposes, as set
18 forth in this article: *Provided*, That house trailers and
19 factory-built homes shall be included within the scope of this
20 article.

21 For the purposes of this article, "farm equipment" means
22 equipment exclusively used in planting, cultivating,
23 irrigation, and harvesting of agricultural products, but not
24 marketing of such products. The term "farm equipment"
25 includes, but is not limited to, the following equipment, and
26 also includes attachments and repair parts for the following

27 equipment: tractors; crawler tractors (other than bulldozers);
28 walking tractors; cultivators; plows; harrows; power tillers;
29 rotary tillers; spading machines; subsoilers; plastic mulch
30 layers; planters and planting machines; seeders; mechanical
31 transplanters; manure spreaders; fertilizer spreaders;
32 insecticide and fertilizer sprayers; irrigation equipment;
33 harvesters; fixed and portable belt and screw type conveyors
34 exclusively used in agriculture; cotton pickers; hullers;
35 swathers; windrowers; balers; bale movers exclusively used
36 in agriculture; hay conditioners; hay mowers; mowing
37 machines; mower/conditioners; hay rakes; hay tedders; feed
38 grinders; grain carts; rock pickers; milking machines and
39 milking machine components, animal trailers, to the extent
40 that they constitute tangible personal property, apiary
41 equipment. Provided, that the term "farm equipment" does
42 not include: (1) Property that is not tangible personal
43 property, (2) building materials and equipment that is
44 installed into a building or structure so as to be converted
45 upon installation into a fixture or into real property, (3) cars,
46 trucks, motorcycles and any other self-propelled machines
47 designed primarily for the transportation of persons or
48 property on a street or highway, (4) trailers, or towed
49 machines or apparatus designed primarily for the
50 transportation of persons or property on a street or highway,
51 (5) fork lifts, backhoes, earth movers, bulldozers, end
52 loaders, power shovels, excavators or other equipment
53 primarily designed to be used in earth moving, excavation or
54 construction activity, or in the activity of warehouse
55 materials handling and (6) airplanes, and other aircraft, and
56 (7) all terrain vehicles, motorcycles and other off road
57 vehicles primarily designed for recreational use; and 'farm
58 equipment dealers' means a person, partnership, corporation,
59 association or other form of business enterprise which
60 primarily sells farm equipment as defined above.

61 This article does not apply to units of inventory which are
62 included in fleet sales, transactions between dealers or

63 classified as heavy duty trucks of sixteen thousand pounds or
64 more gross vehicular weight. For purposes of this article,
65 inventory subject to the provisions of this article shall be
66 denoted "dealer vehicle inventory", "dealer motorboat
67 inventory", "daily passenger rental car inventory", "farm
68 equipment dealers inventory" and "house trailer and
69 factory-built homes inventory".

**§11-6C-2. Method for determining market value of dealer
vehicle inventory, dealer motorboat inventory,
farm equipment dealers inventory, daily
passenger rental car inventory and house trailer
and factory-built homes inventory.**

1 (a) For purposes of appraisal, the market value of dealer
2 vehicle inventory, dealer motorboat inventory and farm
3 equipment dealers inventory, as of the first day of July of
4 each year, shall be the gross sales or total annual sales of
5 such inventory made by such dealer during the preceding
6 calendar year, divided by twelve, for a dealer with respect to
7 which or whom sales were made during the entire preceding
8 year. For the purposes of this article, "gross sales" or "total
9 annual sales" means the amount received in money, credits,
10 property, services or other consideration from sales within
11 this state without deduction on account of the cost of the
12 property sold, amounts paid for interest or any other expenses
13 whatsoever. Gross sales or total annual sales shall not be
14 reduced by the value of an item of tangible personal property
15 which is traded in for the purpose of reducing the purchase
16 price of the item purchased. In the case of dealers who were
17 not in business during the entire calendar year immediately
18 preceding the first day of July of that calendar year, the
19 assessor shall estimate the market value of such inventory
20 based on such data as may be available to him or her:
21 *Provided*, That the assessor may extrapolate estimates using
22 such sales data as may be available and reliable when sales
23 are made for a period of three months or more during the

24 prior year: *Provided, however,* That there shall be excluded
25 from the appraisal calculations the value of those units which
26 were not physically held as inventory by the owner of the
27 inventory at any time during the preceding year. In all cases,
28 the market value, so derived, shall serve as the basis for
29 calculating the appraised value.

30 (b) For purposes of appraisal, the market value of daily
31 passenger rental car inventory, as of the first day of July of
32 each year, shall be the gross value of all daily passenger
33 rental cars made available by a daily passenger rental car
34 business on the first day of each month of the immediately
35 preceding calendar year: *Provided,* That the daily passenger
36 rental car business shall add together the gross values and
37 divide that sum by twelve. For purposes of this article,
38 "gross value" means the lowest value for each vehicle as
39 shown in a nationally accepted used car guide determined by
40 the Tax Commissioner. To calculate the "gross value" of any
41 vehicle that does not appear in a nationally accepted used car
42 guide, the Tax Commissioner shall determine the percent of
43 the manufacturer's suggested retail price for each such
44 vehicle held as a daily passenger rental car without deduction
45 on account of the cost of any inventory, amounts paid for
46 interest or any other expenses whatsoever. In the case of
47 daily passenger rental car businesses that were not in
48 business during the entire calendar year immediately
49 preceding the first day of July of that calendar year, the
50 assessor shall estimate the market value of such daily
51 passenger rental car inventory based on such data as may be
52 available to him or her: *Provided, however,* That the assessor
53 may extrapolate estimates using the daily passenger rental car
54 data that is made available and reliable when rentals were
55 made for a period of three months or more during the prior
56 year: *Provided further,* That there shall be excluded from the
57 appraisal calculations the value of those units which were not
58 physically held as daily passenger rental car inventory by the
59 owner of the daily passenger rental car inventory at any time

60 during the preceding year. In all cases, the gross value of
61 daily passenger rental car inventory, so derived, shall serve
62 as the basis for calculating the appraised value of the
63 inventory. For purposes of this article, "daily passenger
64 rental car inventory" includes all motor vehicles licensed as
65 a Class A motor vehicle as defined in section one, article ten,
66 chapter seventeen-a of this code.

67 (c) For purposes of appraisal, the market value of house
68 trailer and factory-built homes inventory, as of the first day
69 of July of each year, shall be the gross sales or total annual
70 sales of such inventory made by such dealer during the
71 preceding calendar year, divided by twelve, for a dealer with
72 respect to which or whom sales were made during the entire
73 preceding year. For the purposes of this article, "gross sales"
74 or "total annual sales" means the amount received in money,
75 credits, property, services or other consideration from sales
76 within this state without deduction on account of the cost of
77 the property sold, amounts paid for interest or any other
78 expenses whatsoever. Gross sales or total annual sales shall
79 not be reduced by the value of an item of tangible personal
80 property which is traded in for the purpose of reducing the
81 purchase price of the item purchased. In the case of dealers
82 who were not in business during the entire calendar year
83 immediately preceding the first day of July of that calendar
84 year, the assessor shall estimate the market value of such
85 inventory based on such data as may be available to him or
86 her: *Provided*, That the assessor may extrapolate estimates
87 using such sales data as may be available and reliable when
88 sales are made for a period of three months or more during
89 the prior year: *Provided, however*, That there shall be
90 excluded from the appraisal calculations the value of those
91 units which were not physically held as inventory by the
92 owner of the inventory at any time during the preceding year.
93 In all cases, the market value, so derived, shall serve as the
94 basis for calculating the appraised value.

§11-6C-3. Owner to file return estimating market value.

1 The owner of dealer vehicle inventory, daily passenger
2 rental car inventory, dealer motorboat inventory, farm
3 equipment dealers inventory, or house trailer and
4 factory-built homes inventory shall report the market value
5 of such inventory, derived as set forth in section two of this
6 article, to the assessor, as a part of the return required by law
7 to be filed annually pursuant to the provisions of this chapter.

§11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, farm equipment dealers inventory or house trailer and factory-built homes inventory.

1 The annual amount of tax levied upon the dealer vehicle
2 inventory, daily passenger rental car inventory, dealer
3 motorboat inventory, farm equipment dealers inventory or
4 house trailer and factory-built homes inventory pursuant to
5 article eight of this chapter shall be based upon the market
6 value as determined pursuant to this article, times the
7 assessment percentage then provided by law.

§11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

1 (a) This article is adopted to address the lack of
2 uniformity, audit difficulties and business management issues
3 arising in this state with respect to the assessment of the
4 personal property held as new and used dealer vehicle
5 inventory, daily passenger rental car inventory, dealer
6 motorboat inventory, farm equipment dealers inventory or
7 house trailer and factory-built homes inventory.
8 Accordingly, the Legislature finds and declares that the
9 adoption of this article will provide a more reliable and
10 uniform method of determining market value of dealer

11 vehicle inventory, daily passenger rental car inventory, dealer
12 motorboat inventory, farm equipment dealers inventory or
13 house trailer and factory-built homes inventory; minimize
14 audit problems associated with such property; provide a
15 predictable revenue stream for levying bodies; maximize the
16 owner's ability to manage inventory; and provide clear
17 guidance to local authorities by superseding the wide variety
18 of otherwise lawful appraisal methods now in use in this
19 state.

20 (b) The Tax Commissioner shall have the power to
21 promulgate such rules as may be necessary to implement the
22 provisions of this article.

CHAPTER 208

**(Com. Sub. for S.B. 265 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 7, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6H-1, §11-6H-2, §11-6H-3, §11-6H-4, §11-6H-4a, §11-6H-5, §11-6H-5a, §11-6H-6 and §11-6H-7, all relating to the method of valuation of certain aircraft; providing definitions; providing methodology for valuation of certain aircraft; stating that the initial determination of valuation is to be made by the county assessor; providing for an initial determination by the Board of Public Works for certain aircraft; authorizing the protest and appeal of the assessor's decision; providing for an appeal to the Board of Public Works; requiring an economic report on the

economic benefit of the valuation methodology; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6H-1, §11-6H-2, §11-6H-3, §11-6H-4, §11-6H-4a, §11-6H-5, §11-6H-5a, §11-6H-6 and §11-6H-7, all to read as follows:

ARTICLE 6H. VALUATION OF SPECIAL AIRCRAFT PROPERTY.

- §11-6H-1. Short title.
- §11-6H-2. Definitions.
- §11-6H-3. Valuation of special aircraft property.
- §11-6H-4. Initial determination by county assessor.
- §11-6H-4a. Initial determination by the Board of Public Works.
- §11-6H-5. Protest and appeal.
- §11-6H-5a. Protest and appeal to the Board of Public Works.
- §11-6H-6. Report on economic benefit.
- §11-6H-7. Effective date.

§11-6H-1. Short title.

- 1 This article shall be known and cited as the Special
- 2 Aircraft Property Valuation Act.

§11-6H-2. Definitions.

- 1 (a) When used in this article, terms defined in subsection
- 2 (b) of this section have the meanings ascribed to them by this
- 3 section, unless a different meaning is clearly required by the
- 4 context in which the term is used.

- 5 (b) *Terms defined.* --

- 6 (1) "Aircraft" means a weight-carrying structure for
- 7 navigation of the air that is supported by the dynamic action

8 of the air against its surfaces and includes, but is not limited
9 to, an airplane or helicopter. For the purposes of this article,
10 the term "aircraft" does not include dirigibles, balloons, kites,
11 rockets, gliders, ornithopters, fan wing vehicles, autogyros
12 and powered lift vehicles other than helicopters.

13 (2) "Airplane" means a fixed-wing aircraft heavier than
14 air that is driven by a propeller or by jet, turbojet, turbofan,
15 ram jet, pulse jet, scramjet or rocket engine and supported by
16 the dynamic reaction of air against its wings.

17 (3) "Commercial airline" means an air transportation
18 system used to transport people and tangible personal
19 property for profit and includes carriers that operate with
20 fixed routes and flight schedules as well as charter carriers.

21 (4) "Helicopter" means an aircraft whose support in the
22 air is derived chiefly from the aerodynamic forces acting on
23 one or more rotors turning about on substantially vertical
24 axes.

25 (5) "Private carrier" means any firm, partnership, joint
26 venture, joint stock company, any public or private
27 corporation, cooperative, trust, business trust or any other
28 group or combination acting as a unit that is engaged in a
29 primary business other than commercial air transportation
30 that operates an aircraft for the transportation of employees
31 or others for business purposes.

32 (6) "Salvage value" means the lower of fair market
33 salvage value or five percent of the original cost of the
34 property.

35 (7) "Special aircraft property" means all aircraft owned
36 or leased by commercial airlines or private carriers.

§11-6H-3. Valuation of special aircraft property.

1 Notwithstanding any other provision of this code to the
2 contrary, the value of special aircraft property, for the
3 purpose of ad valorem property taxation under this chapter
4 and under article X of the Constitution of the State of West
5 Virginia, shall be its salvage value.

§11-6H-4. Initial determination by county assessor.

1 The assessor of the county in which a specific item of
2 property is located shall determine, in writing, whether that
3 specific item of property is special aircraft property subject
4 to valuation in accordance with this article. Upon making a
5 determination that a taxpayer has special aircraft property,
6 the county assessor shall notify the Tax Commissioner of that
7 determination and shall provide information as the Tax
8 Commissioner requires relating to that determination.

§11-6H-4a. Initial determination by the Board of Public Works.

1 For special aircraft property subject to assessment by the
2 Board of Public Works as provided for in article six of this
3 chapter, the board shall determine, in writing, whether that
4 specific item of property is special aircraft property subject
5 to valuation in accordance with this article. Upon making a
6 determination that a taxpayer has special aircraft property,
7 the Board of Public Works shall notify the Tax
8 Commissioner of that determination and shall provide
9 information as the Tax Commissioner requires relating to that
10 determination.

§11-6H-5. Protest and appeal.

1 At any time after the property is returned for taxation, but
2 prior to the first day of January of the assessment year, any

3 taxpayer may apply to the county assessor for information
4 regarding the issue of whether any particular item or items of
5 property constitute special aircraft property under this article
6 which is subject to valuation in accordance with this article.
7 If the taxpayer believes that some portion of the taxpayer's
8 property is subject to the provisions of this article, the
9 taxpayer may file objections in writing with the county
10 assessor. The county assessor shall decide the matter by
11 either sustaining the protest and making proper corrections or
12 by stating, in writing if requested, the reasons for the county
13 assessor's refusal. The county assessor may, and if the
14 taxpayer requests, the county assessor shall, before the first
15 day of January of the assessment year, certify the question to
16 the Tax Commissioner in a statement sworn to by both
17 parties, or if the parties are unable to agree, in separate sworn
18 statements. The sworn statement or statements shall contain
19 a full description of the property and its uses and any other
20 information the Tax Commissioner requires.

21 The Tax Commissioner shall, as soon as possible upon
22 receipt of the question, but in no case later than the twenty-
23 eighth day of February of the assessment year, instruct the
24 county assessor as to how the property shall be treated. The
25 instructions issued and forwarded by mail to the county
26 assessor are binding upon the county assessor, but either the
27 county assessor or the taxpayer may apply to the circuit court
28 of the county for review of the question of the applicability
29 of this article to the property in the same fashion as is
30 provided for appeals from the county commission in section
31 twenty-five, article three of this chapter. The Tax
32 Commissioner shall prescribe forms on which the questions
33 under this section shall be certified and the Tax
34 Commissioner has the authority to pursue any inquiry and
35 procure any information which may be necessary for
36 disposition of the matter.

§11-6H-5a. Protest and appeal to the Board of Public Works.

1 At any time after the property is returned for taxation, but
2 prior to the first day of January of the assessment year, any
3 public service business taxpayer may apply to the Board of
4 Public Works for information regarding the issue of whether
5 any particular item or items of property constitute special
6 aircraft property under this article which is subject to
7 valuation in accordance with this article. If the taxpayer
8 believes that some portion of the taxpayer's property is
9 subject to the provisions of this article, the taxpayer may file
10 objections in writing with the board. The board shall decide
11 the matter by either sustaining the protest and making proper
12 corrections, or by stating, in writing if requested, the reasons
13 for the board's refusal.

14 Any taxpayer claiming to be aggrieved by any decision
15 may apply by petition in writing, duly verified, to the circuit
16 court of the county in which the property is situated, or if the
17 property be situated in more than one county then in the
18 county in which the largest assessment of the owner or
19 operator was made in the next preceding year, for an appeal
20 from the assessment and valuation made of all property, in
21 the same fashion as is provided for appeals from the board in
22 section twelve, article six of this chapter.

§11-6H-6. Report on economic benefit.

1 The West Virginia Aeronautics Commission shall
2 provide to the Joint Committee on Government and Finance
3 by the first day of March, two thousand twelve, and on the
4 first day of March of each of the two subsequent years, a
5 report detailing the economic benefit of the valuation method
6 specified in this article. The report is to include the number
7 of new jobs created, number of additional aircraft relocated
8 to West Virginia, number of new hangars built and the ad
9 valorem property tax impact.

§11-6H-7. Effective date.

1 This article shall be effective for assessment years
2 commencing on and after the first day of July, two thousand
3 nine.

CHAPTER 209

**(Com. Sub. for S.B. 239 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 8, 2008; in effect July 1, 2008.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and §11-6I-11; and to amend said code by adding thereto a new section, designated §11-21-24, all relating to the taxation of real property owned by senior citizens; providing definitions; providing deferment for payment of property tax increment; specifying that the senior citizen property tax relief tax credit may be applied in lieu of such deferment; authorizing rules; requiring application for the deferment; providing for deferment renewal and waiver of deferment; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; authorizing creation of a lien on property for which deferment is approved; specifying conditions for liens and lien payment and termination; requiring the Tax Commissioner to prescribe necessary forms and instructions; authorizing the Tax Commissioner to propose legislative rules; establishing criminal penalties; authorizing severability of provisions of the

article; creating the Senior Citizen Property Tax Relief Credit Act; providing definitions; providing tax credit against personal income tax for payment of a specified property tax increment under certain circumstances; specifying that the Senior Citizen Property Tax Payment Deferment may be applied in lieu of such credit; requiring application for the tax credit; providing for tax credit renewal; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; requiring the Tax Commissioner to prescribe necessary forms and instructions; and establishing criminal penalties.

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 §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and §11-6I-11; and that said code be amended by adding thereto a new section, designated §11-21-24, all to read as follows:

Article

6I. Senior Citizen Property Tax Payment Deferment Act.

21. Personal Income Tax.

**ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX
PAYMENT DEFERMENT ACT.**

- §11-6I-1. Short title.
- §11-6I-2. Definitions.
- §11-6I-3. Property tax payment deferment.
- §11-6I-4. Application for deferment; renewals; waiver of deferment.
- §11-6I-5. Determination; notice of denial of application for deferment.
- §11-6I-6. Appeals procedure.
- §11-6I-7. Termination of deferment.
- §11-6I-8. Property tax books; lien on property.
- §11-6I-9. Forms, instructions and regulations.
- §11-6I-10. Criminal penalties; restitution.
- §11-6I-11. Severability.

§11-6I-1. Short title.

1 This article shall be known as the Senior Citizen Property
2 Tax Payment Deferment Act.

§11-6I-2. Definitions.

1 As used in this article, the following terms shall have the
2 meaning ascribed to them in this section, unless the context
3 in which the term is used clearly requires a different meaning
4 or a specific different definition is provided:

5 (1) "Assessed value" means the value of property as
6 determined under article three of this chapter.

7 (2) "Deferment" means a delay or postponement.

8 (3) "Homestead" means a homestead qualified for the
9 homestead property tax exemption authorized in article six-b
10 of this chapter, but limited to a single-family residential
11 house, including a mobile or manufactured or modular home,
12 and the land, not exceeding one acre, surrounding such
13 structure that is owned by the owner of the single-family
14 residential house, including a mobile or manufactured or
15 modular home; or a mobile or manufactured or modular
16 home regardless of whether the land upon which such mobile
17 or manufactured or modular home is situated is owned by
18 another.

19 (4) "Owner" means the person who is possessed of the
20 homestead, whether in fee or for life. A person seized or
21 entitled in fee subject to a mortgage or deed of trust shall be
22 considered the owner. A person who has an equitable estate
23 of freehold, or is a purchaser of a freehold estate who is in
24 possession before transfer of legal title shall also be
25 considered the owner. Personal property mortgaged or

26 pledged shall, for the purpose of taxation, be considered the
27 property of the party in possession.

28 (5) "Sixty-five years of age or older" includes a person
29 who attains the age of sixty-five on or before the thirtieth day
30 of June following the July first assessment day.

31 (6) "Tax increment" means the increase of ad valorem
32 taxes assessed on the homestead, determined as the
33 difference between the ad valorem taxes assessed on the
34 homestead for the current tax year and the ad valorem taxes
35 assessed on the homestead for the tax year immediately
36 preceding the tax year for which the taxpayer's application
37 for property tax deferment specified in this article is
38 approved by the assessor, or otherwise finally approved in
39 accordance with the provisions of this article.

40 (7) "Used and occupied exclusively for residential
41 purposes" means that the property is used as an abode,
42 dwelling or habitat for more than six consecutive months of
43 the calendar year prior to the date of application by the owner
44 thereof; and that subsequent to making application for
45 deferment, the property is used only as an abode, dwelling or
46 habitat to the exclusion of any commercial use.

47 (8) "Tax year" means the calendar year following the July
48 first assessment day.

§11-6I-3. Property tax payment deferment.

1 (a) The following homesteads shall qualify for the
2 deferment provided in subsection (b) of this section:

3 (1) Any homestead owned by an owner sixty-five years
4 of age or older and used and occupied exclusively for
5 residential purposes by such owner; and

6 (2) Any homestead that:

7 (A) Is owned by an owner sixty-five years of age or older
8 who, as a result of illness, accident or infirmity, is residing
9 with a family member or is a resident of a nursing home,
10 personal care home, rehabilitation center or similar facility;

11 (B) Was most recently used and occupied exclusively for
12 residential purposes by the owner or the owner's spouse; and

13 (C) Has been retained by the owner for noncommercial
14 purposes.

15 (b) (1) For tax years commencing on or after the first day
16 of January, two thousand nine, the owner of a homestead
17 meeting the qualifications set forth in subsection (a) of this
18 section may apply for a deferment in the payment of the tax
19 increment of ad valorem taxes assessed under the authority
20 of article three of this chapter on the homestead: *Provided,*
21 That the deferment may be authorized only when the tax
22 increment is the greater of three hundred dollars or ten
23 percent or more: *Provided, however,* That all deferred taxes
24 are not subject to any rate of interest.

25 (2) In lieu of the deferment of the tax increment
26 authorized pursuant to this article, a taxpayer entitled to such
27 deferment may elect to instead apply the senior citizen
28 property tax relief credit authorized under section twenty-
29 four, article twenty-one of this chapter. Any taxpayer making
30 such election shall be fully subject to the terms and
31 limitations set forth in section twenty-four, article twenty-one
32 of this chapter.

**§11-6I-4. Application for deferment; renewals; waiver of
deferment.**

1 (a) *General.* -- No deferment may be allowed under this
2 article unless an application for deferment is filed with the
3 assessor of the county in which the homestead is located, on
4 or before the first day of November following mailing of the
5 tax ticket in which the tax increment that is the subject of the
6 application is contained, such tax ticket being mailed
7 pursuant to section eight, article one, chapter eleven-a of this
8 code. In the case of sickness, absence or other disability of
9 the owner, the application may be filed by the owner or his or
10 her duly authorized agent.

11 (b) *Renewals.* -- After the owner has filed an application
12 for deferment with his or her assessor, there shall be no need
13 for that owner to refile an application for the taxes so
14 deferred.

15 (c) *Waiver of deferment.* -- Any person otherwise
16 qualified who does not apply for deferment from payment of
17 a tax increment on or before the first day of November as
18 specified in this article is considered to have waived his or
19 her right to apply for deferment from such payment for that
20 tax year.

**§11-6I-5. Determination; notice of denial of application for
deferment.**

1 (a) The assessor shall, as soon as practicable after an
2 application for deferment is filed, review that application and
3 either approve or deny it. The assessor shall approve or
4 disapprove an application for deferment within thirty days of
5 receipt. Any application not approved or denied within thirty
6 days is deemed approved. If the application is denied, the
7 assessor shall promptly, but not later than the first day of
8 January, serve the owner with written notice explaining why
9 the application was denied and furnish a form for filing with
10 the county commission, should the owner desire to take an
11 appeal. The notice required or authorized by this section shall

12 be served on the owner or his or her authorized representative
13 either by personal service or by certified mail.

14 (b) In the event that the assessor has information
15 sufficient to form a reasonable belief that an owner, after
16 having been originally granted a deferment, is no longer
17 eligible for the deferment, he or she shall, within thirty days
18 after forming this reasonable belief, revoke the deferment and
19 serve the owner with written notice explaining the reasons for
20 the revocation and furnish a form for filing with the county
21 commission should the owner desire to take an appeal.

§11-6I-6. Appeals procedure.

1 (a) *Notice of appeal; thirty days.* -- Any owner aggrieved
2 by the denial of his or her claim for application for deferment
3 or the revocation of a previously approved deferment may
4 appeal to the county commission of the county within which
5 the property is situated. All such appeals shall be filed within
6 thirty days after the owner's receipt of written notice of the
7 denial of an application or the revocation of a previously
8 approved deferment, as applicable, pursuant to section five of
9 this article.

10 (b) *Review; determination; appeal.* -- The county
11 commission shall complete its review and issue its
12 determination as soon as practicable after receipt of the
13 notice of appeal, but in no event later than the twenty-eighth
14 day of February following the tax year for which the
15 deferment was sought. In conducting its review, the county
16 commission may hold a hearing on the application. The
17 assessor or the owner may apply to the circuit court of the
18 county for review of the determination of the county
19 commission in the same manner as is provided for appeals
20 from the county commission in section twenty-five, article
21 three of this chapter.

§11-6I-7. Termination of deferment.

1 Any deferment approved in accordance with the
2 provisions of section five of this article shall terminate
3 immediately when any of the following events occur:

4 (1) The death of the owner of the property for which the
5 deferment was authorized;

6 (2) The sale of the property for which the deferment was
7 approved;

8 (3) A determination by the assessor that the property for
9 which the deferment was approved no longer qualifies for the
10 deferment in accordance with the provisions of this article;

11 (4) The owner of the property for which the deferment
12 was approved fails to maintain a fire insurance policy on the
13 property that, if the property is destroyed, is sufficient to pay
14 all debts for which the property is used as collateral and all
15 tax increments that have been deferred and other charges
16 provided by law;

17 (5) The owner of the property for which the deferment
18 was approved fails to maintain a flood insurance policy that,
19 if the property is destroyed, is sufficient to pay all debts for
20 which the property is used as collateral and all tax increments
21 that have been deferred and other charges provided by law:
22 *Provided*, That the provisions of this subdivision shall apply
23 only to the following property: (A) Property within a flood
24 elevation that has a one percent chance of being equaled or
25 exceeded each year, as determined by the Federal Emergency
26 Management Agency; (B) property within a one hundred year
27 floodplain as designated by the Federal Emergency
28 Management Agency; or (C) property within a special flood
29 hazard area as determined by the Federal Emergency
30 Management Agency or as shown on the most current

24 order that the defendant make restitution unto the county for
25 all taxes not paid due to an improper deferment, or
26 continuation of a deferment, for the owner.

§11-6I-11. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity does not affect,
4 impair or invalidate other provisions or applications of the
5 article, and to this end the provisions of this article are
6 declared to be severable.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-24. Senior citizen property tax relief credit.

1 (a) *Definitions.* -- As used in this section, the following
2 terms shall have the meaning ascribed to them in this
3 subsection, unless the context in which the term is used
4 clearly requires a different meaning or a specific different
5 definition is provided:

6 (1) "Assessed value" means the value of property as
7 determined under article three of this chapter.

8 (2) "Real property taxes paid" means, for the tax years
9 beginning on or after the first day January, two thousand
10 nine, the aggregate of regular levies, excess levies and bond
11 levies extended against the homestead that are paid during
12 the calendar year and determined after any application of any
13 discount for early payment of taxes but before application of
14 any penalty or interest for late payment of property taxes.

15 (3) "Senior citizen property tax relief tax credit" means
16 the tax credit authorized under this section.

17 (4) "Gross household income" means gross household
18 income as defined in section twenty-three of this article.

19 (5) "Homestead" means a homestead qualified for the
20 homestead property tax exemption authorized in article six-b
21 of this chapter, but limited to a single-family residential
22 house, including a mobile or manufactured or modular home,
23 and the land, not exceeding one acre, surrounding such
24 structure that is owned by the owner of the single-family
25 residential house, including a mobile or manufactured or
26 modular home; or a mobile or manufactured or modular
27 home regardless of whether the land upon which such mobile
28 or manufactured or modular home is situated is owned by
29 another.

30 (6) "Owner" or "homeowner" means the person who is
31 possessed of the homestead, whether in fee or for life. A
32 person seized or entitled in fee subject to a mortgage or deed
33 of trust shall be considered the owner. A person who has an
34 equitable estate of freehold, or is a purchaser of a freehold
35 estate who is in possession before transfer of legal title shall
36 also be considered the owner. Personal property mortgaged
37 or pledged shall, for the purpose of taxation, be considered
38 the property of the party in possession.

39 (7) "Sixty-five years of age or older" includes a person
40 who attains the age of sixty-five on or before the thirtieth day
41 of June following the July first assessment day.

42 (8) "Tax increment" means the increase of ad valorem
43 taxes assessed on the homestead, determined as the
44 difference between the ad valorem taxes assessed on the
45 homestead for the current tax year and the ad valorem taxes
46 assessed on the homestead for the tax year immediately
47 preceding the tax year for which the taxpayer's application
48 for tax credit specified in this section is approved by the

49 assessor, or otherwise finally approved in accordance with
50 the provisions of this article.

51 (9) "Tax year" means the property tax calendar year
52 following the July first assessment day.

53 (10) "Used and occupied exclusively for residential
54 purposes" means that the property is used as an abode,
55 dwelling or habitat for more than six consecutive months of
56 the calendar year prior to the date of application by the owner
57 thereof; and that subsequent to making application for tax
58 credit, the property is used only as an abode, dwelling or
59 habitat to the exclusion of any commercial use.

60 (b) *Refundable credit.* -- Subject to the requirements and
61 limitations of this section, for the tax years beginning on or
62 after the first day of January, two thousand nine, any
63 homeowner having a gross household income equal to or less
64 than twenty-five thousand dollars for the tax year, living in
65 his or her homestead shall be allowed a refundable credit
66 against the taxes imposed by this article equal to the amount
67 of real property taxes paid that are attributable to the tax
68 increment of ad valorem taxes assessed under the authority
69 of article three of this chapter on the homestead: *Provided,*
70 That the gross household income shall be adjusted annually
71 in accordance with the consumer price index. The credit shall
72 be applied against the personal income tax in the personal
73 income tax year of the taxpayer when the property tax
74 increment was actually paid.

75 (1) Due to the administrative cost of processing, the
76 refundable credit authorized by this section may not be
77 refunded if less than ten dollars.

78 (2) The credit for each property tax year shall be claimed
79 by filing a claim for refund within twelve months after the
80 real property taxes are paid on the homestead.

81 (3) Notwithstanding the provisions of section twenty-one
82 or section twenty-three of this article, for property tax years
83 that begin on or after the first day of January, two thousand
84 nine, a homeowner is eligible to benefit from this section,
85 section twenty-one or twenty-three of this article, whichever
86 section provides the most benefit as determined by the
87 homeowner. No homeowner may receive benefits under this
88 section, section twenty-one or twenty-three of this article
89 during the same taxable year. Nothing in this section shall be
90 interpreted to deny any lawfully entitled taxpayer of the
91 homestead exemption provided in section three, article six-b
92 of this chapter.

93 (c) *Qualification for credit.* --

94 (1) The following homesteads shall qualify for the tax
95 credit provided in this section:

96 (A) Any homestead owned by an owner sixty-five years
97 of age or older and used and occupied exclusively for
98 residential purposes by such owner; and

99 (B) Any homestead that:

100 (i) Is owned by an owner sixty-five years of age or older
101 who, as a result of illness, accident or infirmity, is residing
102 with a family member or is a resident of a nursing home,
103 personal care home, rehabilitation center or similar facility;

104 (ii) Was most recently used and occupied exclusively for
105 residential purposes by the owner or the owner's spouse; and

106 (iii) Has been retained by the owner for noncommercial
107 purposes.

108 (2) (A) For tax years commencing on or after the first day
109 of January, two thousand nine, the owner of a homestead

110 meeting the qualifications set forth in subdivision (1) of this
111 subsection may apply for a tax credit in the amount of the tax
112 increment of ad valorem taxes assessed under the authority
113 of article three of this chapter on the homestead, subject to
114 the limitations set forth in this section: *Provided*, That the
115 tax credit may be authorized only when the tax increment is
116 the greater of three hundred dollars or ten percent or more.

117 (B) In lieu of the tax credit authorized under this section,
118 a taxpayer entitled to such credit may elect to instead apply
119 the deferment of the tax increment authorized pursuant to
120 article six-h of this chapter. Any taxpayer making such
121 election shall be fully subject to the terms and limitations set
122 forth in article six-h of this chapter.

123 (d) *Application for tax credit; renewals; waiver of tax*
124 *credit. --*

125 (1) *General.* -- No tax credit may be allowed under this
126 section unless an application for tax credit is filed with the
127 assessor of the county in which the homestead is located, on
128 or before the first day of November following mailing of the
129 tax ticket in which the tax increment that is the subject of the
130 application is contained, such tax ticket being mailed
131 pursuant to section eight, article one, chapter eleven-a of this
132 code. In the case of sickness, absence or other disability of
133 the owner, the application may be filed by the owner or his or
134 her duly authorized agent.

135 (2) *Renewals.* -- After the owner has filed an application
136 for tax credit with his or her assessor, there shall be no need
137 for that owner to refile an application for the tax credit.
138 However, the taxpayer shall in all cases be required to file a
139 personal income tax return in order to claim the credit in any
140 tax year.

141 (e) *Determination; notice of denial of application for tax*
142 *credit.* --

143 (1) The assessor shall, as soon as practicable after an
144 application for tax credit is filed, review that application and
145 either approve or deny it. If the application is denied, the
146 assessor shall promptly, but not later than the first day of
147 January, serve the owner with written notice explaining why
148 the application was denied and furnish a form for filing with
149 the county commission, should the owner desire to take an
150 appeal. The notice required or authorized by this section shall
151 be served on the owner or his or her authorized representative
152 either by personal service or by certified mail. The assessor
153 shall approve or disapprove an application for tax credit
154 within thirty days of receipt. Any application not approved or
155 denied within thirty days is deemed approved.

156 (2) In the event that the assessor has information
157 sufficient to form a reasonable belief that an owner, after
158 having been originally granted a tax credit, is no longer
159 eligible for the tax credit, he or she shall, within thirty days
160 after forming this reasonable belief, revoke the tax credit and
161 serve the owner with written notice explaining the reasons for
162 the revocation and furnish a form for filing with the county
163 commission should the owner desire to take an appeal.

164 (f) *Appeals procedure.* --

165 (1) *Notice of appeal; thirty days.* -- Any owner aggrieved
166 by the denial of his or her claim for application for tax credit
167 or the revocation of a previously approved tax credit may
168 appeal to the county commission of the county within which
169 the property is situated. All such appeals shall be filed within
170 thirty days after the owner's receipt of written notice of the
171 denial of an application or the revocation of a previously
172 approved tax credit, as applicable, pursuant to subsection (e)
173 of this section.

174 (2) *Review; determination; appeal.* -- The county
175 commission shall complete its review and issue its
176 determination as soon as practicable after receipt of the
177 notice of appeal, but in no event later than the twenty-eighth
178 day of February following the tax year for which the tax
179 credit was sought. In conducting its review, the county
180 commission may hold a hearing on the application. The
181 assessor or the owner may apply to the circuit court of the
182 county for review of the determination of the county
183 commission in the same manner as is provided for appeals
184 from the county commission in section twenty-five, article
185 three of this chapter.

186 (g) *Termination of tax credit.* --

187 (1) Any tax credit approved in accordance with the
188 provisions of this section shall terminate immediately when
189 any of the following events occur:

190 (A) The death of the owner of the property for which the
191 tax credit was authorized;

192 (B) The sale of the property for which the tax credit was
193 approved; or

194 (C) A determination by the assessor that the property for
195 which the tax credit was approved no longer qualifies for the
196 tax credit in accordance with the provisions of this section.

197 (h) *Forms, instructions and regulations.* -- The Tax
198 Commissioner shall prescribe and supply all necessary
199 instructions and forms for administration of this section.
200 Additionally, the Tax Commissioner may propose rules for
201 legislative approval in accordance with the provisions of
202 article three, chapter twenty-nine-a of this code as the Tax
203 Commissioner considers necessary for the implementation of
204 this section.

205 (i) *Criminal penalties; restitution.* --

206 (1) *False or fraudulent claim for tax credit.* -- Any owner
207 who willfully files a fraudulent application for tax credit and
208 any person who knowingly assisted in the preparation or
209 filing of such fraudulent application for tax credit or who
210 knowingly supplied information upon which the fraudulent
211 application for tax credit was prepared or allowed is guilty of
212 a misdemeanor and, upon conviction thereof, shall be fined
213 not less than two hundred fifty nor more than five hundred
214 dollars, or imprisoned in jail for not more than one year, or
215 both fined and imprisoned.

216 (2) In addition to the criminal penalties provided above,
217 upon conviction of any of the above offenses, the court shall
218 order that the defendant make restitution unto this state for all
219 taxes not paid due to an improper tax credit, or continuation
220 of a tax credit, for the owner and interest thereon at the legal
221 rate until paid.



CHAPTER 210

(H.B. 3201 - By Delegates Shaver and Argento)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to the procedure, assessment, collection, efficient administration and technical

advancements for certain taxes; requiring electronic filing of tax returns when the taxpayer meets a certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; authorizing the Tax Commissioner to refuse, revoke, suspend or refuse to renew a business registration certificate for a business that is the alter ego, nominee or instrumentality of a business in certain situations; and defining alter ego; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; requiring the Tax Commissioner to design a combined reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

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 §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

Article

- 10. **West Virginia Tax Procedure and Administration Act.**
- 12. **Business Registration Tax.**
- 15. **Consumers Sales and Service Tax.**
- 21. **Personal Income Tax.**

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5z. Electronic filing for certain persons.

§11-10-7d. Combining assessments.

***§11-10-5z. Electronic filing for certain persons.**

1 (a) For tax years beginning on or after the first day of
2 January, two thousand nine, any person required to file a
3 return for a tax administered under the provisions of this
4 article and who had total annual remittance for any single tax
5 equal to or greater than one hundred thousand dollars during
6 the immediately preceding taxable year shall file
7 electronically all returns for all taxes administered under this
8 article.

9 (b) The Tax Commissioner shall implement the
10 provisions of this section using any combination of notices,
11 forms, instructions and rules that he or she determines
12 necessary. All rules shall be promulgated pursuant to article
13 three, chapter twenty-nine-a of this code.

***§11-10-7d. Combining assessments.**

1 (a) The Tax Commissioner may, subsequent to any
2 investigation authorized by subsection (a), section seven of
3 this article that results in an assessment in each of two or
4 more taxes administered pursuant to this article, combine
5 those assessments into a combined single assessment. In
6 order to complete any investigation, the Tax Commissioner
7 may review and combine returns for the taxes that are the
8 subject of the investigation.

***CLERK'S NOTE:** These sections were also amended by SB 545 (Chapter 211), which passed prior to this act.

9 (b) If the Tax Commissioner has combined two or more
10 returns as authorized by subsection (a) of this section, the tax
11 remitted shall be applied against taxes in the order provided
12 in a rule promulgated by the Tax Commissioner under the
13 authority of article three, chapter twenty-nine-a of this code.

14 (c) If the Tax Commissioner issues a combined single
15 assessment as authorized in subsection (a) of this section, the
16 limitations on assessment provided in section fifteen of this
17 article shall apply separately to each tax liability included in
18 the single assessment.

19 (d) If the Tax Commissioner issues a single assessment
20 as authorized in subsection (a) of this section and the
21 assessment becomes final pursuant to the provisions of
22 section eight of this article, the Tax Commissioner is
23 authorized to pursue collection of the tax resulting from the
24 combined assessment as authorized by this article, including,
25 but not limited to, sections eleven and thirteen of this article,
26 and to record one lien, pursuant to section twelve of this
27 article, that includes all unpaid amounts of all finalized tax
28 liabilities included in that combined assessment.

ARTICLE 12. BUSINESS REGISTRATION TAX.

***§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.**

***CLERK'S NOTE:** This section was also amended by SB 545 (Chapter 211), which passed prior to this act.

1 (a) *Registration period.* -- All business registration
2 certificates issued under the provisions of section four of this
3 article are for the period of one year beginning the first day
4 of July and ending the thirtieth day of the following June:
5 *Provided,* That beginning on or after the first day of July, one
6 thousand nine hundred ninety-nine, all business registration
7 certificates issued under the provisions of section four of this
8 article shall be issued for two fiscal years of this state, subject
9 to the following transition rule. If the first year for which a
10 business was issued a business registration certificate under
11 this article began on the first day of July of an
12 even-numbered calendar year, then the Tax Commissioner
13 may issue a renewal certificate to that business for the period
14 beginning the first day of July, one thousand nine hundred
15 ninety-nine, and ending the thirtieth day of June, two
16 thousand, upon receipt of fifteen dollars for each such
17 one-year certificate. Notwithstanding any other provisions
18 of this code to the contrary, any certificate of registration
19 granted on or after the first day of July, two thousand ten,
20 shall not be subject to the foregoing requirement that it be
21 renewed, but shall be permanent until cessation of the
22 business for which the certificate of registration was granted
23 or until it is suspended, revoked or cancelled by the Tax
24 Commissioner. Notwithstanding any provision of this code
25 to the contrary, on or after the first day of July, two thousand
26 ten, reference to renewal of the business registration
27 certificate shall refer to the issuance of a new business
28 registration certificate pursuant to expiration, cancellation or
29 revocation of a prior business registration certificate or to
30 reinstatement of a business registration certificate or to
31 reinstatement of a business certificate previously suspended
32 by the Tax Commissioner. On or after the first day of July,
33 two thousand ten, the business registration certificate shall be
34 issued upon payment of a tax of thirty dollars to the Tax
35 Commissioner for new issuances of the business registration
36 certificate or for issuances of the business registration
37 certificate pursuant to expiration, cancellation or revocation

38 of a prior business registration certificate or for reinstatement
39 of a business registration certificate previously suspended by
40 the Tax Commissioner, along with any applicable delinquent
41 fees, interest, penalties and additions to tax.

42 (b) *Revocation or suspension of certificate.* --

43 (1) The Tax Commissioner may cancel or suspend a
44 business registration certificate at any time during a
45 registration period if:

46 (A) The registrant filed an application for a business
47 registration certificate, or an application for renewal thereof,
48 that was false or fraudulent.

49 (B) The registrant willfully refused or neglected to file a
50 tax return or to report information required by the Tax
51 Commissioner for any tax imposed by or pursuant to this
52 chapter.

53 (C) The registrant willfully refused or neglected to pay
54 any tax, additions to tax, penalties or interest, or any part
55 thereof, when they became due and payable under this
56 chapter, determined with regard to any authorized extension
57 of time for payment.

58 (D) The registrant neglected to pay over to the Tax
59 Commissioner on or before its due date, determined with
60 regard to any authorized extension of time for payment, any
61 tax imposed by this chapter which the registrant collects from
62 any person and holds in trust for this state.

63 (E) The registrant abused the privilege afforded to it by
64 article fifteen or fifteen-a of this chapter to be exempt from
65 payment of the taxes imposed by such articles on some or all
66 of the registrant's purchases for use in business upon issuing
67 to the vendor a properly executed exemption certificate, by
68 failing to timely pay use tax on taxable purchase for use in

69 business or by failing to either pay the tax or give a properly
70 executed exemption certificate to the vendor.

71 (F) The registrant has failed to pay in full delinquent
72 personal property taxes owing for the calendar year.

73 (2) On or after the first day of July, two thousand ten, a
74 prospective registrant or a former registrant for which a
75 business registration certificate has been suspended,
76 cancelled or revoked pursuant to the provisions of this article
77 may apply for a new business registration certificate or for
78 reinstatement of a suspended business registration certificate
79 upon payment of all outstanding delinquent fees, taxes,
80 interest, additions to tax and penalties, in addition to payment
81 to the Tax Commissioner of a penalty in the amount of one
82 hundred dollars. The Tax Commissioner may issue a new
83 business registration certificate or reinstate a suspended
84 business registration certificate if the prospective or former
85 registrant has provided security acceptable to and authorized
86 by the Tax Commissioner, payable to the Tax Commissioner,
87 sufficient to secure all delinquent fees, taxes, interest,
88 additions to tax and penalties owed by the prospective
89 registrant. The Tax Commissioner may issue a new business
90 registration certificate or reinstate a suspended business
91 registration certificate if the prospective or former registrant
92 has entered into a payment plan approved by the Tax
93 Commissioner by which liability for all delinquent fees,
94 taxes, interest, additions to tax and penalties will be paid in
95 due course and without significant delay. Failure of any
96 registrant to comply with a payment plan pursuant to this
97 provision shall be grounds for immediate suspension or
98 revocation of the registrant's business registration certificate.

99 (3) On and after the first day of July, two thousand ten, a
100 prospective registrant or a former registrant for which a
101 business registration certificate has been suspended,
102 cancelled or revoked pursuant to the provisions of any article
103 of this code other than this article may apply for a new

104 business registration certificate or for reinstatement of a
105 suspended business registration certificate, only if the
106 prospective or former registrant has complied with all
107 applicable statutory and regulatory requirements for renewal,
108 issuance or reinstatement of the business registration
109 certificate and upon payment to the Tax Commissioner of a
110 penalty in the amount of one hundred dollars.

111 (4) Except pursuant to exceptions specified in this code,
112 before canceling, revoking or suspending any business
113 registration certificate, the Tax Commissioner shall give
114 written notice of his or her intent to suspend, revoke or cancel
115 the business registration certificate of the taxpayer, the reason
116 for the suspension, revocation or cancellation, the effective
117 date of the cancellation, revocation or suspension and the
118 date, time and place where the taxpayer may appear and
119 show cause why such business registration certificate should
120 not be canceled, revoked or suspended. This written notice
121 shall be served on the taxpayer in the same manner as a
122 notice of assessment is served under article ten of this
123 chapter, not less than twenty days prior to the effective date
124 of the cancellation, revocation or suspension. The taxpayer
125 may appeal cancellation, revocation or suspension of its
126 business registration certificate in the same manner as a
127 notice of assessment is appealed under article ten-a of this
128 chapter. The filing of a petition for appeal does not stay the
129 effective date of the suspension, revocation or cancellation.
130 A stay may be granted only after a hearing is held on a
131 motion to stay filed by the registrant upon finding that state
132 revenues will not be jeopardized by the granting of the stay.
133 The Tax Commissioner may, in his or her discretion and
134 upon such terms as he or she may specify, agree to stay the
135 effective date of the cancellation, revocation or suspension
136 until another date certain.

137 (5) On or before the first day of July, two thousand five,
138 the Tax Commissioner shall propose for promulgation
139 legislative rules establishing ancillary procedures for the Tax

140 Commissioner's suspension of business registration
141 certificates for failure to pay delinquent personal property
142 taxes pursuant to paragraph (F), subdivision (1) of this
143 section. The rules shall at a minimum establish any
144 additional requirements for the provision of notice deemed
145 necessary by the Tax Commissioner to meet requirements of
146 law; establish protocols for the communication and
147 verification of information exchanged between the Tax
148 Commissioner, sheriffs and others; and establish fees to be
149 assessed against delinquent taxpayers that shall be deposited
150 into a special fund which is hereby created and expended for
151 general tax administration by the Tax Division of the
152 Department of Tax and Revenue and for operation of the Tax
153 Division. Upon authorization of the Legislature, the rules
154 shall have the same force and effect as if set forth herein. No
155 provision of this subdivision may be construed to restrict in
156 any manner the authority of the Tax Commissioner to
157 suspend such certificates for failure to pay delinquent
158 personal property taxes under paragraph (C) or (F),
159 subdivision (1) of this section or under any other provision of
160 this code prior to the authorization of the rules.

161 (c) *Refusal to renew.* -- The Tax Commissioner may
162 refuse to issue or renew a business registration certificate if
163 the registrant is delinquent in the payment of any tax
164 administered by the Tax Commissioner under article ten of
165 this chapter or the corporate license tax imposed by article
166 twelve-c of this chapter, until the registrant pays in full all the
167 delinquent taxes including interest and applicable additions
168 to tax and penalties. In his or her discretion and upon terms
169 as he or she specifies, the Tax Commissioner may enter into
170 an installment payment agreement with the taxpayer in lieu
171 of the complete payment. Failure of the taxpayer to fully
172 comply with the terms of the installment payment agreement
173 shall render the amount remaining due thereunder
174 immediately due and payable and the Tax Commissioner may
175 suspend or cancel the business registration certificate in the
176 manner provided in this section.

177 (d) *Refusal to renew due to delinquent personal property*
178 *tax.* — The Tax Commissioner shall refuse to issue or renew
179 a business registration certificate when informed in writing,
180 signed by the county sheriff, that personal property owned by
181 the applicant and used in conjunction with the business
182 activity of the applicant is subject to delinquent property
183 taxes. The Tax Commissioner shall forthwith notify the
184 applicant that the commissioner will not act upon the
185 application until information is provided evidencing that the
186 taxes due are either exonerated or paid.

187 (e) *Refusal to issue, revocation, suspension and refusal*
188 *to renew business registration certificate of alter ego,*
189 *nominee or instrumentality of a business that has previously*
190 *been the subject of a lawful refusal to issue, revocation,*
191 *suspension or refuse to renew.--*

192 (1) The Tax Commissioner may refuse to issue a business
193 registration certificate, or may revoke a business registration
194 certificate or may suspend a business registration certificate
195 or may refuse to renew a business registration certificate for
196 any business determined by the Tax Commissioner to be an
197 alter ego, nominee or instrumentality of a business that has
198 previously been the subject of a lawful refusal to issue a
199 business registration certificate or of a lawful revocation,
200 suspension or refusal to renew a business registration
201 certificate pursuant to this section, and for which the business
202 registration certificate has not been lawfully reinstated or
203 reissued.

204 (2) For purposes of this section, a business is presumed
205 to be an alter ego, nominee or instrumentality of another
206 business or other businesses if:

207 (A) More than twenty percent of the real assets or more
208 than twenty percent of the operating assets or more than
209 twenty percent of the tangible personal property of one
210 business are or have been transferred to the other business or

211 businesses, or are or have been used in the operations of the
212 other business or businesses, or more than twenty percent of
213 the real assets or more than twenty percent of the operating
214 assets or more than twenty percent of the tangible personal
215 property of one business are or have been used to
216 collateralize or secure debts or obligations of the other
217 business or businesses;

218 (B) Ownership of the businesses is so configured that the
219 attribution rules of either Internal Revenue Code section 267
220 or Internal Revenue Code section 318 would apply to cause
221 ownership of the businesses to be attributed to the same
222 person or entity; or

223 (C) Substantive control of the businesses is held or
224 retained by the same person, entity or individual, directly or
225 indirectly, or through attribution under paragraph (B) of this
226 subdivision.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.

§11-15-16. Tax return and payment; exception; requiring a combined return.

***§11-15-9j. Direct pay permits for health care providers.**

1 Any person having a right or claim to any exemption set
2 forth in section nine-i of this article shall first pay to the
3 vendor the tax imposed by this article and then apply to the
4 Tax Commissioner for a refund or credit or, as provided in
5 section nine-d of this article and section three-d of article
6 fifteen-a of this chapter, give to the vendor his or her West
7 Virginia direct pay permit number.

***§11-15-16. Tax return and payment; exception; requiring a combined return.**

1 (a) *Payment of tax.* -- Subject to the exceptions set forth
2 in subsection (b) of this section, the taxes levied by this

*CLERK'S NOTE: These sections were also amended by SB 545 (Chapter 211), which passed prior to this act.

3 article are due and payable in monthly installments, on or
4 before the twentieth day of the month next succeeding the
5 month in which the tax accrued, except as otherwise provided
6 in this article.

7 (b) *Combined return required.* --

8 (1) The Tax Commissioner shall, no later than the
9 fifteenth day of June, two thousand eight, design a return that
10 combines filing of the taxes levied by this article and article
11 fifteen-a of this chapter.

12 (2) Beginning the first day of July, two thousand eight,
13 each person required to file a return required by this article or
14 article fifteen-a of this chapter, or both this article and article
15 fifteen-a of this chapter, shall complete and file the return
16 required by the Tax Commissioner.

17 (3) The Tax Commissioner may promulgate rules
18 pursuant to article three, chapter twenty-nine-a of this code
19 and otherwise use any combination of notices, forms and
20 instructions he or she determines necessary to implement the
21 use of the form required by subsection (c) of this section.

22 (c) *Tax return.* -- The taxpayer shall, on or before the
23 twentieth day of each month, make out and mail to the Tax
24 Commissioner a return for the preceding month, in the form
25 prescribed by the Tax Commissioner, showing:

26 (1) The total gross proceeds of the vendor's business for
27 the preceding month;

28 (2) The gross proceeds of the vendor's business upon
29 which the tax is based;

30 (3) The amount of the tax for which the vendor is liable;
31 and

32 (4) Any further information necessary in the computation
33 and collection of the tax which the Tax Commissioner may
34 require, except as otherwise provided in this article or article
35 fifteen-b of this chapter.

36 (d) *Remittance to accompany return.* -- Except as
37 otherwise provided in this article or article fifteen-b of this
38 chapter, a remittance for the amount of the tax shall
39 accompany the return.

40 (e) *Deposit of collected tax.* -- Tax collected by the Tax
41 Commissioner shall be deposited as provided in section thirty
42 of this article, except that:

43 (1) Tax collected on sales of gasoline and special fuel
44 shall be deposited in the state road fund; and

45 (2) Any sales tax collected by the Alcohol Beverage
46 Control Commissioner from persons or organizations
47 licensed under authority of article seven, chapter sixty of this
48 code shall be paid into a revolving fund account in the State
49 Treasury, designated the Drunk Driving Prevention Fund, to
50 be administered by the commission on drunk driving
51 prevention, subject to appropriations by the Legislature.

52 (f) *Return to be signed.* -- A return shall be signed by the
53 taxpayer or the taxpayer's duly authorized agent, when a
54 paper return is prepared and filed. When the return is filed
55 electronically, the return shall include the digital mark or
56 digital signature, as defined in article three, chapter
57 thirty-nine-a of this code, or the personal identification
58 number of the taxpayer, or the taxpayer's duly authorized
59 agent, made in accordance with any procedural rule that may
60 be promulgated by the Tax Commissioner.

61 (g) *Accelerated payment.* --

62 (1) Taxpayers whose average monthly payment of the
63 taxes levied by this article and article fifteen-a of this chapter
64 during the previous calendar year exceeds one hundred
65 thousand dollars, shall remit the tax attributable to the first
66 fifteen days of June each year on or before the twentieth day
67 of June: *Provided*, That on and after the first day of June, two
68 thousand seven, the provisions of this subsection that require
69 the accelerated payment on or before the twentieth day of
70 June of the tax imposed by this article and article fifteen-a of
71 this chapter are no longer effective and any such tax due and
72 owing shall be payable in accordance with subsection (a) of
73 this section.

74 (2) For purposes of complying with subdivision (1) of
75 this subsection, the taxpayer shall remit an amount equal to
76 the amount of tax imposed by this article and article fifteen-a
77 of this chapter on actual taxable sales of tangible personal
78 property and custom software and sales of taxable services
79 during the first fifteen days of June or, at the taxpayer's
80 election, the taxpayer may remit an amount equal to fifty
81 percent of the taxpayer's liability for tax under this article on
82 taxable sales of tangible personal property and custom
83 software and sales of taxable services made during the
84 preceding month of May.

85 (3) For a business which has not been in existence for a
86 full calendar year, the total tax due from the business during
87 the prior calendar year shall be divided by the number of
88 months, including fractions of a month, that it was in
89 business during the prior calendar year; and if that amount
90 exceeds one hundred thousand dollars, the tax attributable to
91 the first fifteen days of June each year shall be remitted on or
92 before the twentieth day of June as provided in subdivision
93 (2) of this subsection.

94 (4) When a taxpayer required to make an advanced
95 payment of tax under subdivision (1) of this subsection
96 makes out its return for the month of June, which is due on

97 the twentieth day of July, the taxpayer may claim as a credit
98 against liability under this article for tax on taxable
99 transactions during the month of June the amount of the
100 advanced payment of tax made under subdivision (1) of this
101 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

***§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.**

1 (a) *General.* -- Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following the
4 close of the calendar quarter, file a withholding return as
5 prescribed by the Tax Commissioner and pay over to the Tax
6 Commissioner the taxes required to be deducted and
7 withheld. Where the average quarterly amount deducted and
8 withheld by any employer is less than one hundred fifty
9 dollars and the aggregate for the calendar year can reasonably
10 be expected to be less than six hundred dollars, the Tax
11 Commissioner may by regulation permit an employer to file
12 an annual return and pay over to the Tax Commissioner the
13 taxes deducted and withheld on or before the last day of the
14 month following the close of the calendar year. The Tax
15 Commissioner may, by nonemergency legislative rules
16 promulgated pursuant to article three, chapter twenty-nine-a
17 of this code, change the minimum amounts established by
18 this subsection. The Tax Commissioner may, if he or she
19 determines necessary for the protection of the revenues,

*CLERK'S NOTE: This section was also amended by SB 545 (Chapter 211), which passed prior to this act.

20 require any employer to make the return and pay to him or her
21 the tax deducted and withheld at any time or from time to
22 time. Notwithstanding the provisions of this subsection, on or
23 after the first day of January, two thousand nine, every
24 employer required to deduct and withhold tax under this article
25 shall file a withholding return as prescribed by the Tax
26 Commissioner and pay over to the Tax Commissioner the
27 taxes required to be deducted and withheld, in accordance with
28 the procedures established by the Internal Revenue Service
29 pursuant to Section 3402 of the Internal Revenue Code.

30 (b) *Monthly returns and payments of withheld tax on and*
31 *after the first day of January, two thousand one.* --
32 Notwithstanding the provisions of subsection (a) of this
33 section, on and after the first day of January, two thousand
34 one, every employer required to deduct and withhold tax
35 under this article shall, for each of the first eleven months of
36 the calendar year, on or before the twentieth day of the
37 succeeding month and for the last calendar month of the year,
38 on or before the last day of the succeeding month, file a
39 withholding return as prescribed by the Tax Commissioner
40 and pay over to the Tax Commissioner the taxes required to
41 be deducted and withheld, if the withheld taxes aggregate two
42 hundred fifty dollars or more for the month, except any
43 employer with respect to whom the Tax Commissioner may
44 have by regulation provided otherwise in accordance with the
45 provisions of subsection (a) of this section. Notwithstanding
46 the provisions of this subsection, on and after the first day of
47 January, two thousand nine, every employer required to
48 deduct and withhold tax under this article shall file a
49 withholding return as prescribed by the Tax Commissioner
50 and pay over to the Tax Commissioner the taxes required to
51 be deducted and withheld. The due dates for returns and
52 payments shall be established by the Tax Commissioner to
53 match as closely as practicable the due dates in effect for
54 federal income tax purposes, in accordance with the
55 procedures established by the Internal Revenue Service
56 pursuant to Section 3402 of the Internal Revenue Code.

57 (c) *Annual returns and payments of withheld tax of*
58 *certain domestic and household employees.* -- Employers of
59 domestic and household employees whose withholdings of
60 federal income tax are annually paid and reported by the
61 employer pursuant to the filing of Schedule H of federal form
62 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,
63 on or before the thirty-first day of January next succeeding
64 the end of the calendar year for which withholdings are
65 deducted and withheld, file an annual withholding return with
66 the Tax Commissioner and annually remit to the Tax
67 Commissioner West Virginia personal income taxes deducted
68 and withheld for the employees. The Tax Commissioner may
69 promulgate legislative or other rules pursuant to article three,
70 chapter twenty-nine-a of this code for implementation of this
71 subsection. Notwithstanding the provisions of this
72 subsection, on or after the first day of January, two thousand
73 nine, every employer required to deduct and withhold tax
74 under this article shall file a withholding return as prescribed
75 by the Tax Commissioner and pay over to the Tax
76 Commissioner the taxes required to be deducted and
77 withheld. The due dates for annual returns and payments
78 shall be established by the Tax Commissioner to match as
79 closely as practicable the due dates in effect for federal
80 income tax purposes in accordance with the procedures
81 established by the Internal Revenue Service pursuant to
82 Section 3402 of the Internal Revenue Code.

83 (d) *Deposit in trust for Tax Commissioner.* -- Whenever
84 any employer fails to collect, truthfully account for or pay
85 over the tax, or to make returns of the tax as required in this
86 section, the Tax Commissioner may serve a notice requiring
87 the employer to collect the taxes which become collectible
88 after service of the notice, to deposit the taxes in a bank
89 approved by the Tax Commissioner, in a separate account, in
90 trust for and payable to the Tax Commissioner and to keep
91 the amount of the tax in the separate account until payment
92 over to the Tax Commissioner. The notice shall remain in

93 effect until a notice of cancellation is served by the Tax
94 Commissioner.

95 (e) *Accelerated payment.* -- (1) Notwithstanding the
96 provisions of subsections (a) and (b) of this section, for
97 calendar years beginning after the thirty-first day of
98 December, one thousand nine hundred ninety, every
99 employer required to deduct and withhold tax whose average
100 payment per calendar month for the preceding calendar year
101 under subsection (b) of this section exceeded one hundred
102 thousand dollars shall remit the tax attributable to the first
103 fifteen days of June each year on or before the twenty-third
104 day of June: *Provided*, That on and after the first day of
105 June, two thousand seven, the provisions of this subsection
106 that require the accelerated payment on or before the
107 twenty-third day of June of the tax imposed by this article are
108 no longer effective and any tax due and owing shall be
109 payable in accordance with subsection (a) of this section.

110 (2) For purposes of complying with subdivision (1) of
111 this subsection, the employer shall remit an amount equal to
112 the withholding tax due under this article on employee
113 compensation subject to withholding tax payable or paid to
114 employees for the first fifteen days of June or, at the
115 employer's election, the employer may remit an amount equal
116 to fifty percent of the employer's liability for withholding tax
117 under this article on compensation payable or paid to
118 employees for the preceding month of May.

119 (3) For an employer which has not been in business for
120 a full calendar year, the total amount the employer was
121 required to deduct and withhold under subsection (b) of this
122 section for the prior calendar year shall be divided by the
123 number of months, including fractions of a month, that it was
124 in business during the prior calendar year and if that amount
125 exceeds one hundred thousand dollars, the employer shall
126 remit the tax attributable to the first fifteen days of June each

127 year on or before the twenty-third day of June, as provided in
128 subdivision (2) of this subsection.

129 (4) When an employer required to make an advanced
130 payment of withholding tax under subdivision (1) of this
131 subsection makes out its return for the month of June, which
132 is due on the twentieth day of July, that employer may claim
133 as a credit against its liability under this article for tax on
134 employee compensation paid or payable for employee
135 services rendered during the month of June the amount of the
136 advanced payment of tax made under subdivision (1) of this
137 subsection.

138 (f) The amendments to this section enacted in the year
139 two thousand six are effective for tax years beginning on or
140 after the first day of January, two thousand six.

141 (g) An annual reconciliation of West Virginia personal
142 income tax withheld shall be submitted by the employer on
143 or before the twenty-eighth day of February following the
144 close of the calendar year, together with Tax Division copies
145 of all withholding tax statements for that preceding calendar
146 year. The reconciliation shall be accompanied by a list of the
147 amounts of income withheld for each employee in such form
148 as the Tax Commissioner prescribes and shall be filed
149 separately from the employer's monthly or quarterly return.

150 (h) Any employer required to file a withholding return for
151 two hundred fifty or more employees shall file its return
152 using electronic filing as defined in section fifty-four of this
153 article. An employer that is required to file electronically but
154 does not do so is subject to a penalty in the amount of
155 twenty-five dollars per employee for whom the return was
156 not filed electronically, unless the employer shows that the
157 failure is due to reasonable cause and not due to willful
158 neglect.

CHAPTER 211

(Com. Sub. for S.B. 545 - By Senator Helmick)

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to tax administration efficiency and technical advancements; requiring electronic filing of tax returns when the taxpayer meets a certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; requiring the Tax Commissioner to design a combined

reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

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 §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

Article

- 10. **West Virginia Tax Procedure and Administration Act.**
- 12. **Business Registration Tax.**
- 15. **Consumers Sales and Service Tax.**
- 21. **Personal Income Tax.**

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5z. Electronic filing for certain persons.

§11-10-7d. Combining assessments.

***§11-10-5z. Electronic filing for certain persons.**

- 1 (a) For tax years beginning on or after the first day of
- 2 January, two thousand nine, any person required to file a
- 3 return for a tax administered under the provisions of this
- 4 article and who had total annual remittance for any single tax
- 5 equal to or greater than one hundred thousand dollars during
- 6 the immediately preceding taxable year shall file
- 7 electronically all returns for all taxes administered under this
- 8 article.

***CLERK'S NOTE:** This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.

9 (b) The Tax Commissioner shall implement the
10 provisions of this section using any combination of notices,
11 forms, instructions and rules that he or she determines
12 necessary. All rules shall be promulgated pursuant to article
13 three, chapter twenty-nine-a of this code.

***§11-10-7d. Combining assessments.**

1 (a) The Tax Commissioner may, subsequent to any
2 investigation authorized by subsection (a), section seven of
3 this article that results in an assessment in each of two or
4 more taxes administered pursuant to this article, combine
5 those assessments into a combined single assessment. In
6 order to complete any investigation, the Tax Commissioner
7 may review and combine returns for the taxes that are the
8 subject of the investigation.

9 (b) If the Tax Commissioner has combined two or more
10 returns as authorized by subsection (a) of this section, the tax
11 remitted shall be applied against taxes in the order provided
12 in a rule promulgated by the Tax Commissioner under the
13 authority of article three, chapter twenty-nine-a of this code.

14 (c) If the Tax Commissioner issues a combined single
15 assessment as authorized in subsection (a) of this section, the
16 limitations on assessment provided in section fifteen of this
17 article shall apply separately to each tax liability included in
18 the single assessment.

19 (d) If the Tax Commissioner issues a single assessment
20 as authorized in subsection (a) of this section and the
21 assessment becomes final pursuant to the provisions of
22 section eight of this article, the Tax Commissioner is
23 authorized to pursue collection of the tax resulting from the
24 combined assessment as authorized by this article, including,
25 but not limited to, sections eleven and thirteen of this article,
26 and to record one lien, pursuant to section twelve of this

*CLERK'S NOTE: This section was also amended by HB 3201 (Chapter 210),
which passed subsequent to this act.

27 article, that includes all unpaid amounts of all finalized tax
28 liabilities included in that combined assessment.

ARTICLE 12. BUSINESS REGISTRATION TAX.

***§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.**

1 (a) *Registration period.* -- All business registration
2 certificates issued under the provisions of section four of this
3 article are for the period of one year beginning the first day
4 of July and ending the thirtieth day of the following June:
5 *Provided*, That beginning on or after the first day of July, one
6 thousand nine hundred ninety-nine, all business registration
7 certificates issued under the provisions of section four of this
8 article shall be issued for two fiscal years of this state, subject
9 to the following transition rule. If the first year for which a
10 business was issued a business registration certificate under
11 this article began on the first day of July of an
12 even-numbered calendar year, then the Tax Commissioner
13 may issue a renewal certificate to that business for the period
14 beginning the first day of July, one thousand nine hundred
15 ninety-nine, and ending the thirtieth day of June, two
16 thousand, upon receipt of fifteen dollars for each such
17 one-year certificate. Notwithstanding any other provisions of
18 this code to the contrary, any certificate of registration
19 granted on or after the first day of July, two thousand ten,
20 shall not be subject to the foregoing requirement that it be

*CLERK'S NOTE: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.

21 renewed, but shall be permanent until cessation of the
22 business for which the certificate of registration was granted
23 or until it is suspended, revoked or cancelled by the Tax
24 Commissioner. Notwithstanding any provision of this code
25 to the contrary, on or after the first day of July, two thousand
26 ten, reference to renewal of the business registration
27 certificate shall refer to the issuance of a new business
28 registration certificate pursuant to expiration, cancellation or
29 revocation of a prior business registration certificate or to
30 reinstatement of a business registration certificate or to
31 reinstatement of a business certificate previously suspended
32 by the Tax Commissioner. On or after the first day of July,
33 two thousand ten, the business registration certificate shall be
34 issued upon payment of a tax of thirty dollars to the Tax
35 Commissioner for new issuances of the business registration
36 certificate or for issuances of the business registration
37 certificate pursuant to expiration, cancellation or revocation
38 of a prior business registration certificate or for reinstatement
39 of a business registration certificate previously suspended by
40 the Tax Commissioner, along with any applicable delinquent
41 fees, interest, penalties and additions to tax.

42 (b) *Revocation or suspension of certificate.* --

43 (1) The Tax Commissioner may cancel or suspend a
44 business registration certificate at any time during a
45 registration period if:

46 (A) The registrant filed an application for a business
47 registration certificate, or an application for renewal thereof,
48 that was false or fraudulent.

49 (B) The registrant willfully refused or neglected to file a
50 tax return or to report information required by the Tax
51 Commissioner for any tax imposed by or pursuant to this
52 chapter.

53 (C) The registrant willfully refused or neglected to pay
54 any tax, additions to tax, penalties or interest, or any part
55 thereof, when they became due and payable under this
56 chapter, determined with regard to any authorized extension
57 of time for payment.

58 (D) The registrant neglected to pay over to the Tax
59 Commissioner on or before its due date, determined with
60 regard to any authorized extension of time for payment, any
61 tax imposed by this chapter which the registrant collects from
62 any person and holds in trust for this state.

63 (E) The registrant abused the privilege afforded to it by
64 article fifteen or fifteen-a of this chapter to be exempt from
65 payment of the taxes imposed by such articles on some or all
66 of the registrant's purchases for use in business upon issuing
67 to the vendor a properly executed exemption certificate, by
68 failing to timely pay use tax on taxable purchase for use in
69 business or by failing to either pay the tax or give a properly
70 executed exemption certificate to the vendor.

71 (F) The registrant has failed to pay in full delinquent
72 personal property taxes owing for the calendar year.

73 (2) On or after the first day of July, two thousand ten, a
74 prospective registrant or a former registrant for which a
75 business registration certificate has been suspended,
76 cancelled or revoked pursuant to the provisions of this article
77 may apply for a new business registration certificate or for
78 reinstatement of a suspended business registration certificate
79 upon payment of all outstanding delinquent fees, taxes,
80 interest, additions to tax and penalties, in addition to payment
81 to the Tax Commissioner of a penalty in the amount of one
82 hundred dollars. The Tax Commissioner may issue a new
83 business registration certificate or reinstate a suspended
84 business registration certificate if the prospective or former
85 registrant has provided security acceptable to and authorized

86 by the Tax Commissioner, payable to the Tax Commissioner,
87 sufficient to secure all delinquent fees, taxes, interest,
88 additions to tax and penalties owed by the prospective
89 registrant. The Tax Commissioner may issue a new business
90 registration certificate or reinstate a suspended business
91 registration certificate if the prospective or former registrant
92 has entered into a payment plan approved by the Tax
93 Commissioner by which liability for all delinquent fees,
94 taxes, interest, additions to tax and penalties will be paid in
95 due course and without significant delay. Failure of any
96 registrant to comply with a payment plan pursuant to this
97 provision shall be grounds for immediate suspension or
98 revocation of the registrant's business registration certificate.

99 (3) On and after the first day of July, two thousand ten, a
100 prospective registrant or a former registrant for which a
101 business registration certificate has been suspended,
102 cancelled or revoked pursuant to the provisions of any article
103 of this code other than this article may apply for a new
104 business registration certificate or for reinstatement of a
105 suspended business registration certificate only if the
106 prospective or former registrant has complied with all
107 applicable statutory and regulatory requirements for renewal,
108 issuance or reinstatement of the business registration
109 certificate and upon payment to the Tax Commissioner of a
110 penalty in the amount of one hundred dollars.

111 (4) Except pursuant to exceptions specified in this code,
112 before canceling, revoking or suspending any business
113 registration certificate, the Tax Commissioner shall give
114 written notice of his or her intent to suspend, revoke or cancel
115 the business registration certificate of the taxpayer, the reason
116 for the suspension, revocation or cancellation, the effective
117 date of the cancellation, revocation or suspension and the
118 date, time and place where the taxpayer may appear and
119 show cause why such business registration certificate should
120 not be canceled, revoked or suspended. This written notice
121 shall be served on the taxpayer in the same manner as a

122 notice of assessment is served under article ten of this
123 chapter, not less than twenty days prior to the effective date
124 of the cancellation, revocation or suspension. The taxpayer
125 may appeal cancellation, revocation or suspension of its
126 business registration certificate in the same manner as a
127 notice of assessment is appealed under article ten-a of this
128 chapter. The filing of a petition for appeal does not stay the
129 effective date of the suspension, revocation or cancellation.
130 A stay may be granted only after a hearing is held on a
131 motion to stay filed by the registrant upon finding that state
132 revenues will not be jeopardized by the granting of the stay.
133 The Tax Commissioner may, in his or her discretion and
134 upon such terms as he or she may specify, agree to stay the
135 effective date of the cancellation, revocation or suspension
136 until another date certain.

137 (5) On or before the first day of July, two thousand five,
138 the Tax Commissioner shall propose for promulgation
139 legislative rules establishing ancillary procedures for the Tax
140 Commissioner's suspension of business registration
141 certificates for failure to pay delinquent personal property
142 taxes pursuant to paragraph (F), subdivision (1) of this
143 section. The rules shall at a minimum establish any
144 additional requirements for the provision of notice deemed
145 necessary by the Tax Commissioner to meet requirements of
146 law; establish protocols for the communication and
147 verification of information exchanged between the Tax
148 Commissioner, sheriffs and others; and establish fees to be
149 assessed against delinquent taxpayers that shall be deposited
150 into a special fund which is hereby created and expended for
151 general tax administration by the Tax Division of the
152 Department of Revenue and for operation of the Tax
153 Division. Upon authorization of the Legislature, the rules
154 shall have the same force and effect as if set forth herein. No
155 provision of this subdivision may be construed to restrict in
156 any manner the authority of the Tax Commissioner to
157 suspend such certificates for failure to pay delinquent
158 personal property taxes under paragraph (C) or (F),

159 subdivision (1) of this section or under any other provision of
160 this code prior to the authorization of the rules.

161 (c) *Refusal to renew.* -- The Tax Commissioner may
162 refuse to issue or renew a business registration certificate if
163 the registrant is delinquent in the payment of any tax
164 administered by the Tax Commissioner under article ten of
165 this chapter or the corporate license tax imposed by article
166 twelve-c of this chapter, until the registrant pays in full all the
167 delinquent taxes including interest and applicable additions
168 to tax and penalties. In his or her discretion and upon terms
169 as he or she specifies, the Tax Commissioner may enter into
170 an installment payment agreement with the taxpayer in lieu
171 of the complete payment. Failure of the taxpayer to fully
172 comply with the terms of the installment payment agreement
173 shall render the amount remaining due thereunder
174 immediately due and payable and the Tax Commissioner may
175 suspend or cancel the business registration certificate in the
176 manner provided in this section.

177 (d) *Refusal to renew due to delinquent personal property*
178 *tax.* -- The Tax Commissioner shall refuse to issue or renew
179 a business registration certificate when informed in writing,
180 signed by the county sheriff, that personal property owned by
181 the applicant and used in conjunction with the business
182 activity of the applicant is subject to delinquent property
183 taxes. The Tax Commissioner shall forthwith notify the
184 applicant that the commissioner will not act upon the
185 application until information is provided evidencing that the
186 taxes due are either exonerated or paid.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.

§11-15-16. Tax return and payment; exception; requiring a combined return.

***§11-15-9j. Direct pay permits for health care providers.**

***CLERK'S NOTE:** This section was also amended by HB 3201 (Chapter 210),
which passed subsequent to this act.

1 Any person having a right or claim to any exemption set
2 forth in section nine-i of this article shall first pay to the
3 vendor the tax imposed by this article and then apply to the
4 Tax Commissioner for a refund or credit or, as provided in
5 section nine-d of this article and section three-d, article
6 fifteen-a of this chapter, give to the vendor his or her West
7 Virginia direct pay permit number.

***§11-15-16. Tax return and payment; exception; requiring a
combined return.**

1 (a) *Payment of tax.* -- Subject to the exceptions set forth
2 in subsection (b) of this section, the taxes levied by this
3 article are due and payable in monthly installments, on or
4 before the twentieth day of the month next succeeding the
5 month in which the tax accrued, except as otherwise provided
6 in this article.

7 (b) *Combined return required.* --

8 (1) The Tax Commissioner shall, no later than the
9 fifteenth day of June, two thousand eight, design a return that
10 combines filing of the taxes levied by this article and article
11 fifteen-a of this chapter.

12 (2) Beginning the first day of July, two thousand eight,
13 each person required to file a return required by this article or
14 article fifteen-a of this chapter, or both this article and article
15 fifteen-a of this chapter, shall complete and file the return
16 required by the Tax Commissioner.

17 (3) The Tax Commissioner may promulgate rules
18 pursuant to article three, chapter twenty-nine-a of this code
19 and otherwise use any combination of notices, forms and
20 instructions he or she determines necessary to implement the
21 use of the form required by subsection (c) of this section.

*CLERK'S NOTE: This section was also amended by HB 3201 (Chapter 210),
which passed subsequent to this act.

22 (c) *Tax return.* -- The taxpayer shall, on or before the
23 twentieth day of each month, make out and mail to the Tax
24 Commissioner a return for the preceding month, in the form
25 prescribed by the Tax Commissioner, showing:

26 (1) The total gross proceeds of the vendor's business for
27 the preceding month;

28 (2) The gross proceeds of the vendor's business upon
29 which the tax is based;

30 (3) The amount of the tax for which the vendor is liable;
31 and

32 (4) Any further information necessary in the computation
33 and collection of the tax which the Tax Commissioner may
34 require, except as otherwise provided in this article or article
35 fifteen-b of this chapter.

36 (d) *Remittance to accompany return.* -- Except as
37 otherwise provided in this article or article fifteen-b of this
38 chapter, a remittance for the amount of the tax shall
39 accompany the return.

40 (e) *Deposit of collected tax.* -- Tax collected by the Tax
41 Commissioner shall be deposited as provided in section thirty
42 of this article, except that:

43 (1) Tax collected on sales of gasoline and special fuel
44 shall be deposited in the state road fund; and

45 (2) Any sales tax collected by the Alcohol Beverage
46 Control Commissioner from persons or organizations
47 licensed under authority of article seven, chapter sixty of this
48 code shall be paid into a revolving fund account in the State
49 Treasury, designated the Drunk Driving Prevention Fund, to
50 be administered by the Commission on Drunk Driving
51 Prevention, subject to appropriations by the Legislature.

52 (f) *Return to be signed.* -- A return shall be signed by the
53 taxpayer or the taxpayer's duly authorized agent when a paper
54 return is prepared and filed. When the return is filed
55 electronically, the return shall include the digital mark or
56 digital signature, as defined in article three, chapter
57 thirty-nine-a of this code, or the personal identification
58 number of the taxpayer, or the taxpayer's duly authorized
59 agent, made in accordance with any procedural rule that may
60 be promulgated by the Tax Commissioner.

61 (g) *Accelerated payment.* --

62 (1) Taxpayers whose average monthly payment of the
63 taxes levied by this article and article fifteen-a of this chapter
64 during the previous calendar year exceeds one hundred
65 thousand dollars, shall remit the tax attributable to the first
66 fifteen days of June each year on or before the twentieth day
67 of June: *Provided*, That on and after the first day of June, two
68 thousand seven, the provisions of this subsection that require
69 the accelerated payment on or before the twentieth day of
70 June of the tax imposed by this article and article fifteen-a of
71 this chapter are no longer effective and any such tax due and
72 owing shall be payable in accordance with subsection (a) of
73 this section.

74 (2) For purposes of complying with subdivision (1) of
75 this subsection, the taxpayer shall remit an amount equal to
76 the amount of tax imposed by this article and article fifteen-a
77 of this chapter on actual taxable sales of tangible personal
78 property and custom software and sales of taxable services
79 during the first fifteen days of June or, at the taxpayer's
80 election, the taxpayer may remit an amount equal to fifty
81 percent of the taxpayer's liability for tax under this article on
82 taxable sales of tangible personal property and custom
83 software and sales of taxable services made during the
84 preceding month of May.

85 (3) For a business which has not been in existence for a
86 full calendar year, the total tax due from the business during
87 the prior calendar year shall be divided by the number of
88 months, including fractions of a month, that it was in
89 business during the prior calendar year; and if that amount
90 exceeds one hundred thousand dollars, the tax attributable to
91 the first fifteen days of June each year shall be remitted on or
92 before the twentieth day of June as provided in subdivision
93 (2) of this subsection.

94 (4) When a taxpayer required to make an advanced
95 payment of tax under subdivision (1) of this subsection
96 makes out its return for the month of June, which is due on
97 the twentieth day of July, the taxpayer may claim as a credit
98 against liability under this article for tax on taxable
99 transactions during the month of June the amount of the
100 advanced payment of tax made under subdivision (1) of this
101 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

***§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.**

1 (a) *General.* -- Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following the
4 close of the calendar quarter, file a withholding return as
5 prescribed by the Tax Commissioner and pay over to the Tax

*CLERK'S NOTE: This section was also amended by HB 3201 (Chapter 210), which passed subsequent to this act.

6 Commissioner the taxes required to be deducted and
7 withheld. Where the average quarterly amount deducted and
8 withheld by any employer is less than one hundred fifty
9 dollars and the aggregate for the calendar year can reasonably
10 be expected to be less than six hundred dollars, the Tax
11 Commissioner may by regulation permit an employer to file
12 an annual return and pay over to the Tax Commissioner the
13 taxes deducted and withheld on or before the last day of the
14 month following the close of the calendar year. The Tax
15 Commissioner may, by nonemergency legislative rules
16 promulgated pursuant to article three, chapter twenty-nine-a
17 of this code, change the minimum amounts established by
18 this subsection. The Tax Commissioner may, if he or she
19 determines necessary for the protection of the revenues,
20 require any employer to make the return and pay to him or
21 her the tax deducted and withheld at any time or from time to
22 time. Notwithstanding the provisions of this subsection, on
23 or after the first day of January, two thousand nine, every
24 employer required to deduct and withhold tax under this
25 article shall file a withholding return as prescribed by the Tax
26 Commissioner and pay over to the Tax Commissioner the
27 taxes required to be deducted and withheld, in accordance
28 with the procedures established by the Internal Revenue
29 Service pursuant to Section 3402 of the Internal Revenue
30 Code.

31 (b) *Monthly returns and payments of withheld tax on and*
32 *after the first day of January, two thousand one.* --
33 Notwithstanding the provisions of subsection (a) of this
34 section, on and after the first day of January, two thousand
35 one, every employer required to deduct and withhold tax
36 under this article shall, for each of the first eleven months of
37 the calendar year, on or before the twentieth day of the
38 succeeding month and for the last calendar month of the year,
39 on or before the last day of the succeeding month, file a
40 withholding return as prescribed by the Tax Commissioner
41 and pay over to the Tax Commissioner the taxes required to

42 be deducted and withheld, if the withheld taxes aggregate two
43 hundred fifty dollars or more for the month, except any
44 employer with respect to whom the Tax Commissioner may
45 have by regulation provided otherwise in accordance with the
46 provisions of subsection (a) of this section. Notwithstanding
47 the provisions of this subsection, on and after the first day of
48 January, two thousand nine, every employer required to
49 deduct and withhold tax under this article shall file a
50 withholding return as prescribed by the Tax Commissioner
51 and pay over to the Tax Commissioner the taxes required to
52 be deducted and withheld. The due dates for returns and
53 payments shall be established by the Tax Commissioner to
54 match as closely as practicable the due dates in effect for
55 federal income tax purposes, in accordance with the
56 procedures established by the Internal Revenue Service
57 pursuant to Section 3402 of the Internal Revenue Code.

58 (c) *Annual returns and payments of withheld tax of*
59 *certain domestic and household employees.* -- Employers of
60 domestic and household employees whose withholdings of
61 federal income tax are annually paid and reported by the
62 employer pursuant to the filing of Schedule H of federal form
63 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,
64 on or before the thirty-first day of January next succeeding
65 the end of the calendar year for which withholdings are
66 deducted and withheld, file an annual withholding return with
67 the Tax Commissioner and annually remit to the Tax
68 Commissioner West Virginia personal income taxes deducted
69 and withheld for the employees. The Tax Commissioner may
70 promulgate legislative or other rules pursuant to article three,
71 chapter twenty-nine-a of this code for implementation of this
72 subsection. Notwithstanding the provisions of this
73 subsection, on or after the first day of January, two thousand
74 nine, every employer required to deduct and withhold tax
75 under this article shall file a withholding return as prescribed
76 by the Tax Commissioner and pay over to the Tax
77 Commissioner the taxes required to be deducted and
78 withheld. The due dates for annual returns and payments

79 shall be established by the Tax Commissioner to match as
80 closely as practicable the due dates in effect for federal
81 income tax purposes in accordance with the procedures
82 established by the Internal Revenue Service pursuant to
83 Section 3402 of the Internal Revenue Code.

84 (d) *Deposit in trust for Tax Commissioner.* -- Whenever
85 any employer fails to collect, truthfully account for or pay
86 over the tax, or to make returns of the tax as required in this
87 section, the Tax Commissioner may serve a notice requiring
88 the employer to collect the taxes which become collectible
89 after service of the notice, to deposit the taxes in a bank
90 approved by the Tax Commissioner, in a separate account, in
91 trust for and payable to the Tax Commissioner and to keep
92 the amount of the tax in the separate account until payment
93 over to the Tax Commissioner. The notice shall remain in
94 effect until a notice of cancellation is served by the Tax
95 Commissioner.

96 (e) *Accelerated payment.* -- (1) Notwithstanding the
97 provisions of subsections (a) and (b) of this section, for
98 calendar years beginning after the thirty-first day of
99 December, one thousand nine hundred ninety, every
100 employer required to deduct and withhold tax whose average
101 payment per calendar month for the preceding calendar year
102 under subsection (b) of this section exceeded one hundred
103 thousand dollars shall remit the tax attributable to the first
104 fifteen days of June each year on or before the twenty-third
105 day of June: *Provided,* That on and after the first day of June,
106 two thousand seven, the provisions of this subsection that
107 require the accelerated payment on or before the twenty-third
108 day of June of the tax imposed by this article are no longer
109 effective and any tax due and owing shall be payable in
110 accordance with subsection (a) of this section.

111 (2) For purposes of complying with subdivision (1) of
112 this subsection, the employer shall remit an amount equal to
113 the withholding tax due under this article on employee

114 compensation subject to withholding tax payable or paid to
115 employees for the first fifteen days of June or, at the
116 employer's election, the employer may remit an amount equal
117 to fifty percent of the employer's liability for withholding tax
118 under this article on compensation payable or paid to
119 employees for the preceding month of May.

120 (3) For an employer which has not been in business for
121 a full calendar year, the total amount the employer was
122 required to deduct and withhold under subsection (b) of this
123 section for the prior calendar year shall be divided by the
124 number of months, including fractions of a month, that it was
125 in business during the prior calendar year and if that amount
126 exceeds one hundred thousand dollars, the employer shall
127 remit the tax attributable to the first fifteen days of June each
128 year on or before the twenty-third day of June, as provided in
129 subdivision (2) of this subsection.

130 (4) When an employer required to make an advanced
131 payment of withholding tax under subdivision (1) of this
132 subsection makes out its return for the month of June, which
133 is due on the twentieth day of July, that employer may claim
134 as a credit against its liability under this article for tax on
135 employee compensation paid or payable for employee
136 services rendered during the month of June the amount of the
137 advanced payment of tax made under subdivision (1) of this
138 subsection.

139 (f) The amendments to this section enacted in the year
140 two thousand six are effective for tax years beginning on or
141 after the first day of January, two thousand six.

142 (g) An annual reconciliation of West Virginia personal
143 income tax withheld shall be submitted by the employer on
144 or before the twenty-eighth day of February following the
145 close of the calendar year, together with Tax Division copies
146 of all withholding tax statements for that preceding calendar

147 year. The reconciliation shall be accompanied by a list of the
148 amounts of income withheld for each employee in such form
149 as the Tax Commissioner prescribes and shall be filed
150 separately from the employer's monthly or quarterly return.

151 (h) Any employer required to file a withholding return for
152 two hundred fifty or more employees shall file its return
153 using electronic filing as defined in section fifty-four of this
154 article. An employer that is required to file electronically but
155 does not do so is subject to a penalty in the amount of
156 twenty-five dollars per employee for whom the return was
157 not filed electronically, unless the employer shows that the
158 failure is due to reasonable cause and not due to willful
159 neglect.



CHAPTER 212

(Com. Sub. for H.B. 4421 - By Delegates White and Kominar)

[Passed March 5, 2008; in effect July 1, 2008.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12C-13; to amend and reenact §31B-1-108 of said code; to amend and reenact §59-1-2 of said code; and to amend said code by adding thereto a new section, designated §59-1-2a, all relating to the repeal of the corporate license tax; creating an annual report fee; requiring the filing of an annual report with fee payment with the Secretary of State; creating a special revenue account; providing purposes for the expenditure of certain fee collections; legislative rules; and administrative and criminal penalties.

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 §11-12C-13; that §31B-1-108 of said code be amended and reenacted; that §59-1-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §59-1-2a, all to read as follows:

Chapter

11. Taxation.

31B. Uniform Limited Liability Company Act.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-13. Repeal of article.

1 Each provision of this article is repealed for all taxable
2 periods beginning on and after the first day of July, two
3 thousand eight: *Provided*, That tax and fee liabilities arising
4 for license tax years ending before the first day of July, two
5 thousand eight, are determined, paid, administered, assessed
6 and collected as if the tax imposed by this article had not
7 been repealed, and the rights and duties of the taxpayer and
8 the State of West Virginia are fully and completely
9 preserved.

**CHAPTER 31B. UNIFORM LIMITED LIABILITY
COMPANY ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-108. Designated office and agent for service of process.

1 (a) A limited liability company and a foreign limited
2 liability company authorized to do business in this state may
3 continuously maintain in this state:

4 (1) An office, which need not be a place of its business in
5 this state; and

6 (2) An agent and address of the agent for service of
7 process on the company.

8 (b) An agent shall be an individual resident of this state,
9 a domestic corporation, another limited liability company or
10 a foreign corporation or foreign company authorized to do
11 business in this state.

12 (c) Every limited liability company shall pay the annual
13 report fee of twenty-five dollars for the filing of the annual
14 report for the limited liability company as described in
15 section two-a, article one, chapter fifty-nine of this code,
16 which fee shall be due and payable each year after the initial
17 registration of the limited liability company on or before the
18 dates specified in section two-a, article one, chapter fifty-nine
19 of this code and other applicable provisions thereof, and shall
20 be collected by the Secretary of State and deposited in the
21 general administrative fees account established by section
22 two, article one, chapter fifty-nine of this code. The Secretary
23 of State shall dedicate sufficient resources from that fund or
24 other funds to provide the services required in this chapter.

25 (d) The Secretary of State shall keep a record of all
26 processes, notices and demands served pursuant to this
27 section and record the time of and the action taken regarding
28 the service.

29 (e) This section does not affect the right to serve process,
30 notice or demand in any manner otherwise provided by law.

31 (f) The amendments to this section enacted in two
32 thousand eight are effective beginning on and after the first
33 day of July, two thousand eight.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

***§59-1-2. Fees to be charged by Secretary of State.**

1 (a) Except as may be otherwise provided in this code, the
2 Secretary of State shall charge for services rendered in his or her
3 office the following fees to be paid by the person to whom the
4 service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amendment,
7 change of name, registration of trade name, merger,
8 consolidation, conversion, renewal, dissolution, termination,
9 cancellation, withdrawal revocation and reinstatement of
10 business entities organized within the state, as follows:

11 (A) Articles of incorporation of for-profit
12 corporation 50.00

13 (B) Articles of incorporation of nonprofit
14 corporation 25.00

15 (C) Articles of organization of limited liability
16 company 100.00

17 (D) Agreement of a general partnership 50.00

18 (E) Certificate of a limited partnership 100.00

19 (F) Agreement of a voluntary association 50.00

20 (G) Articles of organization of a business trust . 50.00

***CLERK’S NOTE:** This section was also amended by HB 4465 (Chapter 193), which passed subsequent to this act.

21 (H) Amendment or correction of articles of incorporation,
22 including change of name or increase of capital stock, in
23 addition to any applicable license tax 25.00

24 (I) Amendment or correction, including change of name,
25 of articles of organization of business trust, limited liability
26 partnership, limited liability company or professional limited
27 liability company or of certificate of limited partnership or
28 agreement of voluntary association 25.00

29 (J) Amendment and restatement of articles of
30 incorporation, certificate of limited partnership, agreement of
31 voluntary association or articles of organization of limited
32 liability partnership, limited liability company or professional
33 limited liability company or business trust 25.00

34 (K) Registration of trade name, otherwise designated as a
35 true name, fictitious name or D.B.A. (doing business as) name
36 for any domestic business entity as permitted by law . . 25.00

37 (L) Articles of merger of two corporations, limited
38 partnerships, limited liability partnerships, limited liability
39 companies or professional limited liability companies,
40 voluntary associations or business trusts 25.00

41 (M) Plus for each additional party to the merger in
42 excess of two 15.00

43 (N) Statement of conversion, when permitted, from one
44 business entity into another business entity, in addition to the
45 cost of filing the appropriate documents to organize the
46 surviving entity 25.00

47 (O) Articles of dissolution of a corporation, voluntary
48 association or business trust, or statement of dissolution of a
49 general partnership 25.00

50	(P) Revocation of voluntary dissolution of a corporation,	
51	voluntary association or business trust	15.00
52	(Q) Articles of termination of a limited liability	
53	company, cancellation of a limited partnership or statement	
54	of withdrawal of limited liability partnership	25.00
55	(R) Reinstatement of a limited liability company or	
56	professional limited liability company after administrative	
57	dissolution	25.00
58	(2) For filing, recording, indexing, preserving a record	
59	of and issuing a certificate relating to the registration,	
60	amendment, change of name, merger, consolidation,	
61	conversion, renewal, withdrawal or termination within this	
62	state of business entities organized in other states or	
63	countries, as follows:	
64	(A) Certificate of authority of for-profit	
65	corporation	100.00
66	(B) Certificate of authority of nonprofit	
67	corporation	50.00
68	(C) Certificate of authority of foreign limited liability	
69	companies	150.00
70	(D) Certificate of exemption from certificate of	
71	authority	25.00
72	(E) Registration of a general partnership	50.00
73	(F) Registration of a limited partnership	150.00
74	(G) Registration of a limited liability partnership for	
75	two-year term	500.00
76	(H) Registration of a voluntary association	50.00

77	(I) Registration of a trust or business trust	50.00
78	(J) Amendment or correction of certificate of authority	
79	of a foreign corporation, including change of name or	
80	increase of capital stock, in addition to any applicable license	
81	tax	25.00
82	(K) Amendment or correction of certificate of limited	
83	partnership, limited liability partnership, limited liability	
84	company or professional limited liability company, voluntary	
85	association or business trust	25.00
86	(L) Registration of trade name, otherwise designated as	
87	a true name, fictitious name or D.B.A. (doing business as)	
88	name for any foreign business entity as permitted by	
89	law	25.00
90	(M) Amendment and restatement of certificate of	
91	authority or of registration of a corporation, limited	
92	partnership, limited liability partnership, limited liability	
93	company or professional limited liability company,	
94	voluntary association or business trust	25.00
95	(N) Articles of merger of two corporations, limited	
96	partnerships, limited liability partnerships, limited liability	
97	companies or professional limited liability companies,	
98	voluntary associations or business trusts	25.00
99	(O) Plus for each additional party to the merger in	
100	excess of two	5.00
101	(P) Statement of conversion, when permitted, from one	
102	business entity into another business entity, in addition to the	
103	cost of filing the appropriate articles or certificate to organize	
104	the surviving entity	25.00

105 (Q) Certificate of withdrawal or cancellation of a
 106 corporation, limited partnership, limited liability partnership,
 107 limited liability company, voluntary association or business
 108 trust 25.00

109 Notwithstanding any other provision of this section to
 110 the contrary, after the thirtieth day of June, two thousand
 111 eight, the fees described in this subdivision that are collected
 112 for the issuance of a certificate relating to the initial
 113 registration of a corporation, limited partnership, domestic
 114 limited liability company or foreign limited liability company
 115 shall be deposited in the general administrative fees account
 116 established by this section.

117 (3) For receiving, filing and recording a change of the
 118 principal or designated office, change of the agent of process
 119 and/or change of officers, directors, partners, members or
 120 managers, as the case may be, of a corporation, limited
 121 partnership, limited liability partnership, limited liability
 122 company or other business entity as provided by
 123 law 15.00

124 (4) For receiving, filing and preserving a reservation of
 125 a name for each one hundred twenty days or for any other
 126 period in excess of seven days prescribed by law for a
 127 corporation, limited partnership, limited liability partnership
 128 or limited liability company 15.00

129 (5) For issuing a certificate relating to a corporation or
 130 other business entity, as follows:

131 (A) Certificate of good standing of a domestic or foreign
 132 corporation \$10.00

133 (B) Certificate of existence of a domestic limited
 134 liability company, and certificate of authorization foreign
 135 limited liability company 10.00

136 (C) Certificate of existence of any business entity,
137 trademark or service mark registered with the Secretary of
138 State 10.00

139 (D) Certified copy of corporate charter or comparable
140 organizing documents for other business entities . . . 15.00

141 (E) Plus, for each additional amendment, restatement or
142 other additional document 5.00

143 (F) Certificate of registration of the name of a foreign
144 corporation, limited liability company, limited partnership or
145 limited liability partnership 25.00

146 (G) And for the annual renewal of the name
147 registration 10.00

148 (H) Any other certificate not specified in this
149 subdivision 10.00

150 (6) For issuing a certificate other than those relating to
151 business entities, as provided in this subsection, as follows:

152 (A) Certificate or apostille relating to the authority of
153 certain public officers, including the membership of boards
154 and commissions \$10.00

155 (B) Plus, for each additional certificate pertaining to the
156 same transaction 5.00

157 (C) Any other certificate not specified in this
158 subdivision 10.00

159 (D) For acceptance, indexing and recordation of service
160 of process any corporation, limited partnership, limited
161 liability partnership, limited liability company, voluntary

162 association, business trust, insurance company, person or
163 other entity as permitted by law 15.00

164 (E) For shipping and handling expenses for execution of
165 service of process by certified mail upon any defendant
166 within the United States, which fee is to be deposited to the
167 special revenue account established in this section for the
168 operation of the office of the Secretary of State 5.00

169 (F) For shipping and handling expenses for execution of
170 service of process upon any defendant outside the United
171 States by registered mail, which fee is to be deposited to the
172 special revenue account established in this section for the
173 operation of the office of the Secretary of State 15.00

174 (7) For a search of records of the office conducted by
175 employees of or at the expense of the Secretary of State upon
176 request, as follows:

177 (A) For any search of archival records maintained at
178 sites other than the office of the Secretary of State, no less
179 than \$10.00

180 (B) For searches of archival records maintained at sites
181 other than the office of the Secretary of State which require
182 more than one hour, for each hour or fraction of an hour
183 consumed in making such search 10.00

184 (C) For any search of records maintained on site for the
185 purpose of obtaining copies of documents or printouts
186 of data 5.00

187 (D) For any search of records maintained in electronic
188 format which requires special programming to be performed
189 by the state information services agency or other vendor, any
190 actual cost, but not less than 25.00

191 (E) The cost of the search is in addition to the cost of
192 any copies or printouts prepared or any certificate issued
193 pursuant to or based on the search.

194 (F) For recording any paper for which no specific fee is
195 prescribed 5.00

196 (8) For producing and providing photocopies or
197 printouts of electronic data of specific records upon request,
198 as follows:

199 (A) For a copy of any paper or printout of electronic
200 data, if one sheet \$1.00

201 (B) For each sheet after the first50

202 (C) For sending the copies or lists by fax
203 transmission 5.00

204 (D) For producing and providing photocopies of lists,
205 reports, guidelines and other documents produced in multiple
206 copies for general public use, a publication price to be
207 established by the Secretary of State at a rate approximating
208 2.00 plus .10 per page and rounded to the nearest dollar.

209 (E) For electronic copies of records obtained in data
210 format on disk, the cost of the record in the least expensive
211 available printed format, plus, for each required disk, which
212 shall be provided by the Secretary of State 5.00

213 (b) The Secretary of State may propose legislative rules
214 for promulgation for charges for on-line electronic access to
215 database information or other information maintained by the
216 Secretary of State.

217 (c) For any other work or service not enumerated in this
218 subsection, the fee prescribed elsewhere in this code or a rule
219 promulgated under the authority of this code.

220 (d) The records maintained by the Secretary of State are
221 prepared and indexed at the expense of the state and those
222 records shall not be obtained for commercial resale without
223 the written agreement of the state to a contract including
224 reimbursement to the state for each instance of resale.

225 (e) The Secretary of State may provide printed or
226 electronic information free of charge as he or she considers
227 necessary and efficient for the purpose of informing the
228 general public or the news media.

229 (f) There is hereby continued in the State Treasury a
230 special revenue account to be known as the “service fees and
231 collections” account. Expenditures from the account shall be
232 used for the operation of the office of the Secretary of State
233 and are not authorized from collections, but are to be made
234 only in accordance with appropriation by the Legislature and
235 in accordance with the provisions of article three, chapter
236 twelve of this code and upon the fulfillment of the provisions
237 set forth in article two, chapter five-a of this code.
238 Notwithstanding any other provision of this code to the
239 contrary, except as provided in subsection (h) of this section
240 and section two-a of this article, one-half of all the fees and
241 service charges established in the following sections and for
242 the following purposes shall be deposited by the Secretary of
243 State or other collecting agency to that special revenue
244 account and used for the operation of the Office of the
245 Secretary of State:

246 (1) The annual attorney-in-fact fee for corporations and
247 limited partnerships established in section five, article
248 twelve-c, chapter eleven of this code;

249 (2) The fees received for the sale of the State Register,
250 code of state rules and other copies established by rule and
251 authorized by section seven, article two, chapter twenty-nine-
252 a of this code;

253 (3) The registration fees, late fees and legal settlements
254 charged for registration and enforcement of the charitable
255 organizations and professional solicitations established in
256 sections five, nine and fifteen-b, article nineteen, chapter
257 twenty-nine of this code;

258 (4) The annual attorney-in-fact fee for limited liability
259 companies as designated in section one hundred eight, article
260 one, chapter thirty-one-b of this code and established in
261 section two hundred eleven, article two of said chapter:
262 *Provided*, That after the thirtieth day of June, two thousand
263 eight, the annual report fees designated in section one
264 hundred eight, article one, chapter thirty-one-b of this code
265 shall upon collection be deposited in the general
266 administrative fees account described in subsection (h) of this
267 section;

268 (5) The filing fees and search and copying fees for
269 uniform commercial code transactions established by section
270 five hundred twenty-five, article nine, chapter forty-six of
271 this code;

272 (6) The annual attorney-in-fact fee for licensed insurers
273 established in section twelve, article four, chapter thirty-three
274 of this code;

275 (7) The fees for the application and record maintenance
276 of all notaries public established by section one hundred
277 seven, article one, chapter twenty-nine-c of this code;

278 (8) The fees for the application and record maintenance
279 of commissioners for West Virginia as established by section
280 twelve, article four, chapter twenty-nine of this code;

281 (9) The fees for registering credit service organizations
282 as established by section five, article six-c, chapter forty-six-a
283 of this code;

284 (10) The fees for registering and renewing a West
285 Virginia limited liability partnership as established by section
286 one, article ten, chapter forty-seven-b of this code;

287 (11) The filing fees for the registration and renewal of
288 trademarks and service marks established in section
289 seventeen, article two, chapter forty-seven of this code;

290 (12) All fees for services, the sale of photocopies and
291 data maintained at the expense of the Secretary of State as
292 provided in this section; and

293 (13) All registration, license and other fees collected by
294 the Secretary of State not specified in this section.

295 (g) Any balance in the service fees and collections
296 account established by this section which exceeds five
297 hundred thousand dollars as of the thirtieth day of June, two
298 thousand three, and each year thereafter, shall be expired to
299 the state fund, General Revenue Fund.

300 (h)(1) Effective the first day of July, two thousand eight,
301 there is hereby created in the State Treasury a special revenue
302 account to be known as the general administrative fees
303 account. Expenditures from the account shall be used for the
304 operation of the Office of the Secretary of State and are not
305 authorized from collections, but are to be made only in
306 accordance with appropriation by the Legislature and in
307 accordance with the provisions of article three, chapter
308 twelve of this code and upon the fulfillment of the provisions
309 set forth in article two, chapter eleven-b of this code:
310 *Provided*, That for the fiscal year ending the thirtieth day of
311 June, two thousand nine, expenditures are authorized from
312 collections rather than pursuant to an appropriation by the
313 Legislature. Any balance in the account at the end of each
314 fiscal year shall not revert to the General Revenue Fund but
315 shall remain in the fund and be expended as provided by this
316 subsection.

317 (2) After the thirtieth day of June, two thousand eight,
318 all the fees and service charges established in section two-a
319 of this article for the following purposes shall be collected
320 and deposited by the Secretary of State or other collecting
321 agency in the general administrative fees account and used
322 for the operation of the Office of the Secretary of State:

323 (A) The annual report fees paid to the Secretary of State
324 by corporations, limited partnerships, domestic limited
325 liability companies and foreign limited liability companies;

326 (B) The fees for the issuance of a certificate relating to
327 the initial registration of a corporation, limited partnership,
328 domestic limited liability company or foreign limited liability
329 company described in subdivision (2), subsection (a) of this
330 section; and

331 (C) The fees for the purchase of data and updates related
332 to the State's Business Organizations Database described in
333 section two-a of this article.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

1 (a) *Definitions.* -- As used in this section:

2 (1) "Annual report fee" means the fee described in
3 subsection (c) of this article that is to be paid to the Secretary
4 of State each year by corporations, limited partnerships,
5 domestic limited liability companies and foreign limited
6 liability companies. After the thirtieth day of June, two
7 thousand eight, any reference in this code to a fee paid to the
8 Secretary of State for services as a statutory attorney in fact
9 shall mean the annual report fee described in this section.

10 (2) "Business activity" means all activities engaged in or
11 caused to be engaged in with the object of gain or economic
12 benefit, direct or indirect, but does not mean any of the

13 activities of foreign corporations enumerated in subsection
14 (b), section one thousand five hundred one, article fifteen,
15 chapter thirty-one-d of this code, except for the activity of
16 conducting affairs in interstate commerce when activity
17 occurs in this state, nor does it mean any of the activities of
18 foreign limited liability companies enumerated in subsection
19 (a), section one thousand three, article ten, chapter thirty-one-
20 b of this code except for the activity of conducting affairs in
21 interstate commerce when activity occurs in this state.

22 (3) “Corporation” means a “domestic corporation”, a
23 “foreign corporation” or a “nonprofit corporation”.

24 (4) “Deliver or delivery” means any method of delivery
25 used in conventional commercial practice, including, but not
26 limited to delivery by hand, mail, commercial delivery and
27 electronic transmission.

28 (5) “Domestic corporation” means a corporation for
29 profit which is not a foreign corporation incorporated under
30 or subject to the provisions of chapter thirty-one-d of this
31 code.

32 (6) “Domestic limited liability company” means a
33 limited liability company which is not a foreign limited
34 liability company under or subject to the provisions of
35 chapter thirty-one-b of this code.

36 (7) “Foreign corporation” means a for-profit corporation
37 incorporated under a law other than the laws of this state.

38 (8) “Foreign limited liability company” means a limited
39 liability company organized under a law other than the laws
40 of this state.

41 (9) “Limited partnership” means a partnership as defined
42 by section one, article nine, chapter forty-seven of this code.

43 (10) “Nonprofit corporation” means a nonprofit
44 corporation as defined by section one hundred fifty, article
45 one, chapter thirty-one-e of this code.

46 (11) “Registration fee” means the fee for the issuance of
47 a certificate relating to the initial registration of a corporation,
48 limited partnership, domestic limited liability company or
49 foreign limited liability company described in subdivision
50 (2), subsection (a), section two of this article. The term
51 “initial registration” also means the date upon which the
52 registration fee is paid.

53 (b) *Required payment of annual report fee and filing of*
54 *annual report.* -- After the thirtieth day of June, two thousand
55 eight, no corporation, limited partnership, domestic limited
56 liability company or foreign limited liability company may
57 engage in any business activity in this state without paying
58 the annual report fee and filing the annual report as required
59 by this section.

60 (c) *Annual report fee.* -- After the thirtieth day of June,
61 two thousand eight, each corporation, limited partnership,
62 domestic limited liability company and foreign limited
63 liability company engaged in or authorized to do business in
64 this state shall pay an annual report fee of twenty-five dollars
65 for the services of the Secretary of State as attorney-in-fact
66 for the corporation, limited partnership, domestic limited
67 liability company or foreign limited liability company, and
68 for such other administrative services as may be imposed by
69 law upon the Secretary of State. The fee is due and payable
70 each year after the initial registration of the corporation,
71 limited partnership, domestic limited liability company or
72 foreign limited liability company with the annual report
73 described in subsection (d) of this section on or before the
74 dates specified in subsection (e) of this section. The fee is
75 due and payable each year with the annual report from
76 corporations, limited partnerships, domestic limited liability
77 companies and foreign limited liability companies that paid
78 the registration fee prior to the first day of July, two thousand

79 eight, on or before the dates specified in subsection (e) of this
80 section. The annual report fees received by the Secretary of
81 State pursuant to the provisions of this subsection shall be
82 deposited by the Secretary of State in the general
83 administrative fees account established by section two of this
84 article.

85 (d) *Annual report.* -- (1) After the thirtieth day of June,
86 two thousand eight, each corporation, limited partnership,
87 domestic limited liability company and foreign limited
88 liability company engaged in or authorized to do business in
89 this state shall file an annual report. The report is due each
90 year after the initial registration of the corporation, limited
91 partnership, domestic limited liability company or foreign
92 limited liability company with the annual report fee described
93 in subsection (c) of this section on or before the dates
94 specified in subsection (e) of this section. The report is due
95 each year from corporations, limited partnerships, domestic
96 limited liability companies and foreign limited liability
97 companies that paid the registration fee prior to the first day
98 of July, two thousand eight, on or before the dates specified
99 in subsection (e) of this section.

100 (2)(A) The annual report shall be filed with the
101 Secretary of State on forms provided by the Secretary of
102 State for that purpose. The annual report shall, in the case of
103 corporations, contain: (i) The address of the corporation's
104 principal office; (ii) the names and mailing addresses of its
105 officers and directors; (iii) the name and mailing address of
106 the person on whom notice of process may be served; (iv) the
107 name and address of the corporation's parent corporation and
108 of each subsidiary of the corporation licensed to do business
109 in this state; (v) in the case of limited partnerships domestic
110 limited liability companies and foreign limited liability
111 companies, similar information with respect to their principal
112 or controlling interests as determined by the Secretary of
113 State or otherwise required by law to be reported to the
114 Secretary of State; (vi) the county or county code in which
115 the principal office address or mailing address of the

116 company is located; (vii) business class code; and (viii) any
117 other information the Secretary of State considers
118 appropriate.

119 (B) Notwithstanding any other provision of law to the
120 contrary, the Secretary of State shall, upon request of any
121 person, disclose, with respect to corporations: (i) The
122 address of the corporation's principal office; (ii) the names
123 and addresses of its officers and directors; (iii) the name and
124 mailing address of the person on whom notice of process
125 may be served; (iv) the name and address of each subsidiary
126 of the corporation and the corporation's parent corporation;
127 (v) the county or county code in which the principal office
128 address or mailing address of the company is located; and
129 (vi) the business class code. The Secretary of State shall
130 provide similar information with respect to information in its
131 possession relating to limited partnerships domestic limited
132 liability companies and foreign limited liability companies,
133 similar information with respect to their principal or
134 controlling interests.

135 (e) *Annual reports and fees due July 1 or April 1.* --
136 After the thirtieth day of June, two thousand eight, each
137 corporation and limited partnership shall file with the
138 Secretary of State the annual report and pay the annual report
139 fee by the first day of July, two thousand nine, and each year
140 thereafter, and each limited liability company and foreign
141 limited liability shall file with the Secretary of State the
142 annual report and pay the annual report fee by the first day of
143 April, two thousand nine, and each year thereafter: Provided,
144 That each corporation and limited partnership that paid the
145 registration fee prior to the first day of July, two thousand
146 eight shall file the annual report and pay the annual report fee
147 by the first day of July, two thousand eight, and each year
148 thereafter.

149 (f) *Deposit of fees.* -- The annual report fees received by
150 the Secretary of State pursuant to the provisions of this

151 section shall be deposited by the Secretary of State in the
152 general administrative fees account established by section
153 two, article one, chapter fifty-nine of this code.

154 (g) *Duty to pay.* -- It shall be the duty of each
155 corporation, limited partnership, limited liability company
156 and foreign limited liability company required to pay the
157 annual report fees imposed under this article, to remit them
158 with a properly completed annual report to the Secretary of
159 State, and if it fails to do so it shall be subject to the penalties
160 prescribed in subsection (h) of this article.

161 (h) *Penalties.* -- (1) The following penalties shall be in
162 addition to any other penalties and remedies available
163 elsewhere in this code:

164 (A) *Administrative penalty.* -- The Secretary of State
165 shall impose upon each corporation, limited partnership,
166 limited liability company and foreign limited liability
167 company delinquent in the payment of an annual report fee
168 or the filing of an annual report an administrative penalty in
169 the amount of one hundred dollars per year for each year or
170 portion thereof in which the report which is due is not filed
171 or the fees which are owed are not paid. This penalty shall be
172 assessed and collected in the same manner as the fees
173 imposed under this article.

174 (B) *Criminal penalty.* -- It is a misdemeanor for a each
175 corporation, limited partnership, limited liability company or
176 foreign limited liability company to conduct business for
177 more than thirty consecutive calendar days without paying in
178 full the amount of annual report fees which are due or
179 without filing the annual report which is due. Upon
180 conviction, each officer, agent or employee shall be fined not
181 more than one thousand. Each day or portion thereof, after
182 the initial period of thirty consecutive days, during which
183 business is conducted without paying in full the amount of
184 fees which are due, or without filing the report which is due,

185 shall constitute a separate punishable criminal offense.
186 Failure to file shall constitute a separate punishable criminal
187 offense and failure to pay shall constitute a separate
188 punishable criminal offense.

189 (2) All penalties collected under this subsection shall be
190 deposited into General Revenue Fund of the State Treasury
191 in the manner provided by law.

192 (i) *Reports to tax commissioner; suspension,*
193 *cancellation or withholding of business registration*
194 *certificate.* -- (1) The Secretary of State shall, within twenty
195 days after the close of each month, make a report to the Tax
196 Commissioner for the preceding month, in which he or she
197 shall set out the name of every business entity to which he or
198 she issued a certificate to conduct business in the State of
199 West Virginia during that month. The report shall set out the
200 names and addresses all corporations, limited partnerships,
201 limited liability companies and foreign limited liability
202 companies to which he or she issued certificates of change of
203 name or of change of location of principal office, dissolution,
204 withdrawal or merger. If the Secretary of State fails to make
205 the report, it shall be the duty of the Tax Commissioner to
206 report such failure to the Governor. A writ of mandamus
207 shall lie for correction of such failure.

208 (2) Notwithstanding any other provisions of this code to
209 the contrary, upon receipt of notice from the Secretary of
210 State that a corporation, limited partnership, limited liability
211 company and foreign limited liability company is more than
212 thirty days delinquent in the payment of annual report fees or
213 in the filing of an annual report required by this section, the
214 Tax Commissioner may suspend, cancel or withhold a
215 business registration certificate issued to or applied for by the
216 delinquent corporation, limited partnership, limited liability
217 company or foreign limited liability company until the same
218 is paid and filed in the manner provided for the suspension,
219 cancellation or withholding of business registration

220 certificates for other reasons under article twelve, chapter
221 eleven of this code.

222 (j) *Purchase of data.* -- The Secretary of State will
223 provide electronically, for purchase, any data maintained in
224 the Secretary of State's Business Organizations Database. For
225 the electronic purchase of the entire Business Organizations
226 Database, the cost is twelve thousand dollars. For the
227 purchase of the monthly updates of the Business
228 Organizations Database, the cost is one thousand dollars per
229 month. The fees received by the Secretary of State pursuant
230 to the provisions of this subsection shall be deposited by the
231 Secretary of State in the general administrative fees account
232 established by section two, article one, chapter fifty-nine of
233 this code.

234 (k) *Rules.* -- The Secretary of State may propose
235 legislative rules for promulgation pursuant to article three,
236 chapter twenty-nine-a of this code to implement the
237 provisions of this article, and may, pending promulgation of
238 those rules, promulgate emergency rules pursuant to those
239 provisions for those purposes.

CHAPTER 213

**(Com. Sub. for H.B. 4041 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §11-13A-3d and §11-13A-20a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-13V-4a; and

to amend and reenact §31-15A-16 of said code, all relating to equalization of natural gas and coalbed methane taxation; terminating the severance and business privilege tax exemption for production of coalbed methane with certain limited exceptions; specifying that coalbed methane is taxed as natural gas for purposes of the Severance and Business Privilege Tax Act and the Workers' Compensation Debt Reduction Act with limited exceptions; authorizing Tax Commissioner to promulgate rules; requiring portion of tax be used for infrastructure projects; providing that seventy-five percent of dedicated funds be used in counties producing coalbed methane; providing that remaining twenty-five percent of dedicated funds be shared equally by counties not producing coalbed methane; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3d and §11-13A-20a 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 §11-13V-4a; and that §31-15A-16 of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

31. Corporations.

CHAPTER 11. TAXATION.

Article

13A. Severance and Business Privilege Tax Act.

13V. Workers' Compensation Debt Reduction Act.

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE
TAX ACT.**

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

§11-13A-20a. Dedication of tax.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

1 (a) The Legislature hereby finds and declares the
2 following:

3 (1) That coalbed methane is underdeveloped and an
4 under-utilized resource within this state which, where
5 practicable, should be captured and not be vented or wasted;

6 (2) The health and safety of persons engaged in coal
7 mining is a paramount concern to the state. The Legislature
8 intends to preserve coal seams for future safe mining, to
9 facilitate the expeditious, safe evacuation of coalbed methane
10 from the coalbeds of this state, and to ensure the safety of
11 miners by encouraging the advance removal of coalbed
12 methane;

13 (3) The United States environmental protection agency's
14 coalbed methane outreach program encourages United States
15 coal mines in the United States to remove and use methane
16 that is otherwise wasted during mining. These projects have
17 important economic benefits for the mines and their local
18 economies while they also reduce emissions of methane; and

19 (4) The initial costs of development of coalbed methane
20 wells can be large in comparison to conventional wells and
21 deoxygenation and water removal increase development
22 expenditures.

23 The Legislature, therefore, concludes that an incentive to
24 coalbed methane development should be implemented to
25 encourage capture of methane gas that would otherwise be
26 vented to the atmosphere.

27 (b) *Imposition of tax.* — In lieu of the annual privilege tax
28 imposed on the severance of natural gas or oil pursuant to

29 section three-a, article thirteen-a, for the privilege of
30 engaging or continuing within this state in the business of
31 severing coalbed methane for sale, profit or commercial use,
32 there is hereby levied and shall be collected from every
33 person exercising such privilege an annual privilege tax:
34 *Provided*, That effective for taxable years beginning on or
35 after the first day of January, two thousand one, there is an
36 exemption from the imposition of the tax provided for in this
37 article for a maximum period of five years for all coalbed
38 methane produced from any coalbed methane well placed in
39 service after the first day of January, two thousand. For
40 purposes of this section, the terms "coalbed methane" and
41 "coalbed methane well" have the meaning ascribed to them
42 in section two, article twenty-one, chapter twenty-two of this
43 code. The exemption from tax provided by this section is
44 applicable to any coalbed methane well placed in service
45 before the first day of January, two thousand nine, subject to
46 the provisions of subsection (f) of this section.

47 (c) *Rate and measure of tax.* -- The tax imposed on
48 subsection (b) of this section is five percent of the gross value
49 of the coalbed methane produced, as shown by the gross
50 proceeds derived from the sale thereof by the producer,
51 except as otherwise provided in this article.

52 (d) *Tax in addition to other taxes.* -- The tax imposed by
53 this section applies to all persons severing coalbed methane
54 in this state, and is in addition to all other taxes imposed by
55 law.

56 (e) Except as specifically provided in this section,
57 application of the provisions of this article apply to coalbed
58 methane in the same manner and with like effect as the
59 provisions apply to natural gas.

60 (f) Notwithstanding any other provision of this code to
61 the contrary, on and after the first day of January, two

62 thousand nine, the exemption from the tax on the privilege of
63 severing coalbed methane created in this section will no
64 longer be applicable except that the privilege tax shall not be
65 collected on coalbed methane produced from any coalbed
66 methane well for the remainder of the five-year exemption
67 for any well that was placed in service, including the
68 commencement of actual drilling of the well, before the first
69 day of January, two thousand nine.

70 (g) Subject to the exceptions set forth in this section and
71 article thirteen-v of this chapter, on and after the first day of
72 January, two-thousand nine, coalbed methane and methane
73 produced from or by a coalbed methane well is taxable as
74 natural gas for purposes of the taxes imposed by this article
75 and the taxes imposed by article thirteen-v of this chapter.

76 (h) The Tax Commissioner shall promulgate emergency
77 and legislative rules, in accordance with the provisions of
78 article three, chapter twenty-nine-a of this code, as necessary
79 to effectuate the purposes of this article.

§11-13A-20a. Dedication of tax.

1 (a) The amount of taxes collected under this article from
2 providers of health care items or services, including any
3 interest, additions to tax and penalties collected under article
4 ten of this chapter, less the amount of allowable refunds and
5 any interest payable with respect to such refunds, shall be
6 deposited into the special revenue fund created in the State
7 Treasurer's Office and known as the Medicaid State Share
8 Fund. Said fund shall have separate accounting for those
9 health care providers as set forth in articles four-b and four-c,
10 chapter nine of this code.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section, for the remainder of fiscal year one thousand
13 nine hundred ninety-three and for each succeeding fiscal

14 year, no expenditures from taxes collected from providers of
15 health care items or services are authorized except in
16 accordance with appropriations by the Legislature.

17 (c) The amount of taxes on the privilege of severing
18 timber collected under section three-b of this article,
19 including any interest, additions to tax and penalties collected
20 under article ten of this chapter, less the amount of allowable
21 refunds and any interest payable with respect to such refunds,
22 shall be paid into a special revenue account in the State
23 Treasury to be appropriated by the Legislature for purposes
24 of the Division of Forestry.

25 (d) Notwithstanding any other provision of this code to
26 the contrary, beginning the first day of January, two thousand
27 nine, there is hereby dedicated an annual amount not to
28 exceed four million dollars from annual collections of the tax
29 imposed by section three-d of this article to be deposited into
30 the West Virginia Infrastructure Fund, created in section
31 nine, article fifteen-a, chapter thirty-one of this code.

32 (e) Beginning with the fiscal year ending the thirtieth day
33 of June, two thousand nine, and each fiscal year thereafter,
34 the Tax Commissioner shall pay from the taxes imposed in
35 section three-d of this article, on the first day of October of
36 each year, into the West Virginia Infrastructure Fund, an
37 amount not to exceed four million dollars per fiscal year.
38 Prior to making any such payment the commissioner shall
39 deduct the amount of refunds lawfully paid and
40 administrative costs authorized by this code.

41 (f) The Tax Commissioner shall provide to the West
42 Virginia Infrastructure and Jobs Development Council a
43 breakdown of coalbed methane taxes paid and amount of
44 coalbed methane produced by county. The commissioner
45 may obtain any production or other necessary information not
46 currently reported to the commissioner from the owners or

47 operators of coalbed methane wells or from the Department
48 of Environmental Protection or both.

**ARTICLE 13V. WORKERS' COMPENSATION DEBT
REDUCTION ACT.**

§11-13V-4a. Coalbed methane.

1 (a) Subject to the exceptions set forth in this section, on
2 and after the first day of January, two thousand nine, coalbed
3 methane and methane produced from or by a coalbed
4 methane well is taxable as natural gas for purposes of the
5 taxes imposed by this article. All coalbed methane produced
6 from any coalbed methane well placed in service, including
7 the commencement of actual drilling of the well, before the
8 first day of January, two thousand nine, shall be exempt from
9 the taxes imposed by this article for the remainder of the five-
10 year original exemption period set forth in section three-d,
11 article thirteen-a of this chapter and applicable to the coalbed
12 methane produced from that well.

13 (b) For purposes of this section, the terms "coalbed
14 methane" and "coalbed methane well" have the meaning
15 ascribed to them in section two, article twenty-one, chapter
16 twenty-two of this code.

CHAPTER 31. CORPORATIONS.

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.**

§31-15A-16. Dedication of severance tax proceeds.

1 (a) There shall be dedicated an annual amount from the
2 collections of the tax collected pursuant to article thirteen-a,
3 chapter eleven of this code for the construction, extension,
4 expansion, rehabilitation, repair and improvement of water

5 supply and sewage treatment systems and for the acquisition,
6 preparation, construction and improvement of sites for
7 economic development in this state as provided in this article.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning on the first day of July, one thousand
10 nine hundred ninety-five, the first sixteen million dollars of
11 the tax collected pursuant to article thirteen-a, chapter eleven
12 of this code shall be deposited to the credit of the West
13 Virginia Infrastructure General Obligation Debt Service Fund
14 created pursuant to section three, article fifteen-b of this
15 chapter: *Provided*, That beginning on the first day of July,
16 one thousand nine hundred ninety-eight, the first twenty-four
17 million dollars of the tax annually collected pursuant to
18 article thirteen-a of this code shall be deposited to the credit
19 of the West Virginia Infrastructure General Obligation Debt
20 Service Fund created pursuant to section three, article fifteen-
21 b of this chapter.

22 (c) Notwithstanding any provision of subsection (b) of
23 this section to the contrary: (1) None of the collections from
24 the tax imposed pursuant to section six, article thirteen-a,
25 chapter eleven of this code shall be so dedicated or deposited;
26 and (2) the portion of the tax imposed by article thirteen-a,
27 chapter eleven and dedicated for purposes of medicaid and
28 the Division of Forestry pursuant to section twenty-a of said
29 article thirteen-a shall remain dedicated for the purposes set
30 forth in said section twenty-a.

31 (d) On or before the first day of May of each year,
32 commencing the first day of May, one thousand nine hundred
33 ninety-five, the council, by resolution, shall certify to the
34 treasurer and the water development authority the principal
35 and interest coverage ratio and amount for the following
36 fiscal year on any infrastructure general obligation bonds
37 issued pursuant to the provisions of article fifteen-b of this
38 chapter.

39 (e) Notwithstanding any provision of this article to the
40 contrary, the tax on coalbed methane remitted by the Tax
41 Commissioner for deposit in the West Virginia Infrastructure
42 Fund pursuant to section twenty-a, article thirteen-a, chapter
43 eleven of this code shall be distributed as follows: (1)
44 Seventy-five percent of the moneys so deposited shall be
45 distributed for infrastructure projects in the various counties
46 of this state in which the coalbed methane was produced, and
47 (2) the remaining twenty-five percent of the moneys so
48 deposited shall be distributed equally to the various counties
49 of this state in which no coalbed methane was produced for
50 infrastructure projects. Moneys shall be distributed to each
51 coalbed methane producing county in direct proportion to the
52 amount of tax paid by the county using information provided
53 by the Tax Commissioner as required in section twenty-a,
54 article thirteen-a, chapter eleven of this code.

CHAPTER 214

**(H.B. 4628 - By Delegates White, Boggs, Kominar
and Campbell (By Request))**

[Passed March 6, 2008; in effect January 1, 2009.]
[Approved by the Governor on March 15, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-13Q-22,
relating to providing a tax credit for new job creation by certain
taxpayers.

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 §11-13Q-22, to read as follows:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

1 (a) Notwithstanding any provision of this article to the
2 contrary, a taxpayer engaged in one or more of the industries
3 or business activities specified in section nineteen of this
4 article which does not satisfy the new jobs percentage
5 requirement prescribed in subsection (c), section nine, of this
6 article, or if the taxpayer is a small business as defined in
7 section ten of this article, does not create at least ten new jobs
8 within twelve months after placing qualified investment into
9 service as required by section ten of this article, but which
10 otherwise fulfills the requirements prescribed in this article,
11 is permitted to claim a credit against the taxes specified in
12 section seven of this article in the order so specified that are
13 attributable to and the consequence of the taxpayer's business
14 operations in this state, which result in the creation of net
15 new jobs. Credit under this section is allowed in the amount
16 of three thousand dollars per year, per new job created and
17 filled by a new employee; as those terms are defined in
18 section three of this article for a period of five consecutive
19 years beginning in the tax year when the new employee is
20 first hired. In no case may the number of new employees
21 determined for purposes of this section exceed the total net
22 increase in the taxpayer's employment in this state. Credit
23 allowed under this section shall be allowed beginning in the
24 tax year when the new employee is first hired: *Provided,*
25 That each new job:

26 (1) Pays at least thirty-two thousand dollars annually;

27 (2) Provides health insurance and may offer benefits
28 including child care, retirement or other benefits; and

29 (3) Is a full-time, permanent position, as those terms are
30 defined in section three, of this article.

31 Jobs that pay less than thirty-two thousand dollars
32 annually, or that pay that salary but do not also provide
33 benefits in addition to the salary, do not qualify for the credit
34 authorized by this section. Jobs that are less than full-time,
35 permanent positions do not qualify for the credit authorized
36 by this section.

37 (b) Unused credit remaining in any tax year after
38 application against the taxes specified in section seven of this
39 article is forfeited and does not carry forward to any
40 succeeding tax year and does not carry back to a prior tax
41 year.

42 (c) The tax credit authorized by this section may be taken
43 in addition to any credits allowable under articles thirteen-c,
44 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j,
45 thirteen-r or thirteen-s of this chapter.

46 (d) *Reduction in number of employees credit forfeiture*—
47 If during the year when a new job was created for which
48 credit was granted under this section or during any of the
49 next succeeding four tax years thereafter, net jobs that are
50 attributable to and the consequence of the taxpayer's business
51 operations in this state, decrease, counting both new jobs for
52 which credit was granted under this section and preexisting
53 jobs, then the total amount of credit to which the taxpayer is
54 entitled under this section shall be decreased and forfeited in
55 the amount of three thousand dollars for each net job lost.

CHAPTER 215

**(Com. Sub. for S.B. 680 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to repeal §11-23-5b of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13S-4 of said code; to amend said code by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; to amend and reenact §11-23-5a and §11-23-6 of said code; to amend said code by adding thereto a new section, designated §11-23-17b; to amend and reenact §11-24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code; and to amend said code by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all relating to business taxes generally; specifying percentage of taxes subject to offset by manufacturing investment tax credit; creating credit for the value of certain ad valorem taxes paid; requiring report on the application of the credit; providing definitions relating to business franchise tax; providing for eligibility of financial organizations for tax credits; specifying amount of credit allowed; providing for treatment of goodwill associated with certain acquisitions; specifying reductions of business franchise tax rate; defining terms relating to corporate net income tax; specifying general meaning relating to the term “tax haven”; specifying imposition of tax and rates; specifying reductions of corporation net income tax rate and suspension of reductions in certain circumstances; specifying nullity for designated provisions; specifying removal of nullity for

designated provisions; specifying apportionment rules for financial organizations; specifying treatment of insurance companies; specifying method of filing; specifying application of designated net operating losses; specifying treatment of designated dividends; mandating reporting on water's-edge unitary basis; specifying election to report based on worldwide unitary basis; specifying authority of Tax Commissioner to prescribe reporting basis; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-23-5b of the Code of West Virginia, 1931, as amended, be repealed; that §11-13S-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-13Y-1, §11-13Y-2, §11-13Y-3, §11-13Y-4, §11-13Y-5, §11-13Y-6, §11-13Y-7, §11-13Y-8 and §11-13Y-9; that §11-23-5a and §11-23-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-23-17b; that §11-24-3a, §11-24-4, §11-24-7, §11-24-7b, §11-24-13a, §11-24-13c, §11-24-13d, §11-24-13f and §11-24-42 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-24-3b and 11-24-9b, all to read as follows:

Article

- 13S. **Manufacturing Investment Tax Credit.**
- 13Y. **The West Virginia Manufacturing Property Tax Adjustment Act.**
- 23. **Business Franchise Tax.**
- 24. **Corporation Net Income Tax.**

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-4. Amount of credit allowed for manufacturing investment.

- 1 (a) *Credit allowed.* -- There is allowed to eligible
- 2 taxpayers and to persons described in subdivision (5),
- 3 subsection (b) of this section a credit against the taxes

4 imposed by articles thirteen-a, twenty-three and twenty-four
5 of this chapter. The amount of credit shall be determined as
6 hereinafter provided in this section.

7 (b) *Amount of credit allowable.* -- The amount of
8 allowable credit under this article is equal to five percent of
9 the qualified manufacturing investment (as determined in
10 section five of this article) and shall reduce the severance tax,
11 imposed under article thirteen-a of this chapter, the business
12 franchise tax imposed under article twenty-three of this
13 chapter and the corporation net income tax imposed under
14 article twenty-four of this chapter, in that order, subject to the
15 following conditions and limitations:

16 (1) The amount of credit allowable is applied over a ten-
17 year period, at the rate of one-tenth thereof per taxable year,
18 beginning with the taxable year in which the property
19 purchased for manufacturing investment is first placed in
20 service or use in this state;

21 (2) *Severance tax.* -- The credit is applied to reduce the
22 severance tax imposed under article thirteen-a of this chapter
23 (determined before application of the credit allowed by
24 section three, article twelve-b of this chapter and before any
25 other allowable credits against tax and before application of
26 the annual exemption allowed by section ten, article thirteen-
27 a of this chapter). The amount of annual credit allowed may
28 not reduce the severance tax, imposed under article thirteen-a
29 of this chapter, below fifty percent of the amount which
30 would be imposed for such taxable year in the absence of this
31 credit against tax: *Provided*, That for tax years beginning on
32 and after the first day of January, two thousand nine, the
33 amount of annual credit allowed may not reduce the
34 severance tax, imposed under article thirteen-a of this
35 chapter, below forty percent of the amount which would be
36 imposed for such taxable year in the absence of this credit
37 against tax. When in any taxable year the taxpayer is entitled

38 to claim credit under this article and article thirteen-d of this
39 chapter, the total amount of all credits allowable for the
40 taxable year may not reduce the amount of the severance tax,
41 imposed under article thirteen-a of this chapter, below fifty
42 percent of the amount which would be imposed for such
43 taxable year (determined before application of the credit
44 allowed by section three, article twelve-b of this chapter and
45 before any other allowable credits against tax and before
46 application of the annual exemption allowed by section ten,
47 article thirteen-a of this chapter): *Provided, however,* That
48 when in any taxable year beginning on and after the first day
49 of January, two thousand nine, the taxpayer is entitled to
50 claim credit under this article and article thirteen-d of this
51 chapter, the total amount of all credits allowable for the
52 taxable year may not reduce the amount of the severance tax,
53 imposed under article thirteen-a of this chapter, below forty
54 percent of the amount which would be imposed for such
55 taxable year as determined before application of the credit
56 allowed by section three, article twelve-b of this chapter and
57 before any other allowable credits against tax and before
58 application of the annual exemption allowed by section ten,
59 article thirteen-a of this chapter;

60 (3) *Business franchise tax.* --

61 After application of subdivision (2) of this subsection,
62 any unused credit is next applied to reduce the business
63 franchise tax imposed under article twenty-three of this
64 chapter (determined after application of the credits against
65 tax provided in section seventeen, article twenty-three of this
66 chapter, but before application of any other allowable credits
67 against tax). The amount of annual credit allowed will not
68 reduce the business franchise tax, imposed under article
69 twenty-three of this chapter, below fifty percent of the
70 amount which would be imposed for such taxable year in the
71 absence of this credit against tax: *Provided,* That for tax
72 years beginning on and after the first day of January, two

73 thousand nine, the amount of annual credit allowed will not
74 reduce the business franchise tax, imposed under article
75 twenty-three of this chapter, below forty percent of the
76 amount which would be imposed for such taxable year in the
77 absence of this credit against tax. When in any taxable year
78 the taxpayer is entitled to claim credit under this article and
79 article thirteen-d of this chapter, the total amount of all
80 credits allowable for the taxable year will not reduce the
81 amount of the business franchise tax, imposed under article
82 twenty-three of this chapter, below fifty percent of the
83 amount which would be imposed for the taxable year
84 (determined after application of the credits against tax
85 provided in section seventeen, article twenty-three of this
86 chapter, but before application of any other allowable credits
87 against tax): *Provided, however,* That when in any taxable
88 year beginning on and after the first day of January, two
89 thousand nine, the taxpayer is entitled to claim credit under
90 this article and article thirteen-d of this chapter, the total
91 amount of all credits allowable for the taxable year will not
92 reduce the amount of the business franchise tax, imposed
93 under article twenty-three of this chapter, below forty percent
94 of the amount which would be imposed for the taxable year
95 as determined after application of the credits against tax
96 provided in section seventeen, article twenty-three of this
97 chapter, but before application of any other allowable credits
98 against tax;

99 (4) *Corporation net income tax. --*

100 After application of subdivision (3) of this subsection,
101 any unused credit is next applied to reduce the corporation
102 net income tax imposed under article twenty-four of this
103 chapter (determined before application of any other allowable
104 credits against tax). The amount of annual credit allowed
105 will not reduce corporation net income tax, imposed under
106 article twenty-four of this chapter, below fifty percent of the
107 amount which would be imposed for such taxable year in the

108 absence of this credit against tax: *Provided*, That for tax
109 years beginning on and after the first day of January, two
110 thousand nine, the amount of annual credit allowed will not
111 reduce corporation net income tax, imposed under article
112 twenty-four of this chapter, below forty percent of the
113 amount which would be imposed for such taxable year in the
114 absence of this credit against tax. When in any taxable year
115 the taxpayer is entitled to claim credit under this article and
116 article thirteen-d of this chapter, the total amount of all
117 credits allowable for the taxable year may not reduce the
118 amount of the corporation net income tax, imposed under
119 article twenty-four of this chapter, below fifty percent of the
120 amount which would be imposed for the taxable year
121 (determined before application of any other allowable credits
122 against tax): *Provided, however*, That when in any taxable
123 year beginning on and after the first day of January, two
124 thousand nine, the taxpayer is entitled to claim credit under
125 this article and article thirteen-d of this chapter, the total
126 amount of all credits allowable for the taxable year may not
127 reduce the amount of the corporation net income tax,
128 imposed under article twenty-four of this chapter, below forty
129 percent of the amount which would be imposed for the
130 taxable year as determined before application of any other
131 allowable credits against tax;

132 (5) *Pass-through entities. --*

133 (A) If the eligible taxpayer is a limited liability company,
134 small business corporation or a partnership, then any unused
135 credit (after application of subdivisions (2), (3) and (4) of this
136 subsection) is allowed as a credit against the taxes imposed
137 by article twenty-four of this chapter on owners of the
138 eligible taxpayer on the conduit income directly derived from
139 the eligible taxpayer by its owners. Only those portions of
140 the tax imposed by article twenty-four of this chapter that are
141 imposed on income directly derived by the owner from the
142 eligible taxpayer are subject to offset by this credit.

143 (B) The amount of annual credit allowed will not reduce
144 corporation net income tax, imposed under article twenty-
145 four of this chapter, below fifty percent of the amount which
146 would be imposed on the conduit income directly derived
147 from the eligible taxpayer by each owner for such taxable
148 year in the absence of this credit against the taxes
149 (determined before application of any other allowable credits
150 against tax): *Provided*, That for tax years beginning on and
151 after the first day of January, two thousand nine, the amount
152 of annual credit allowed will not reduce corporation net
153 income tax, imposed under article twenty-four of this chapter,
154 below forty percent of the amount which would be imposed
155 on the conduit income directly derived from the eligible
156 taxpayer by each owner for such taxable year in the absence
157 of this credit against the taxes as determined before
158 application of any other allowable credits against tax.

159 (C) When in any taxable year the taxpayer is entitled to
160 claim credit under this article and article thirteen-d of this
161 chapter, the total amount of all credits allowable for the
162 taxable year will not reduce the corporation net income tax
163 imposed on the conduit income directly derived from the
164 eligible taxpayer by each owner below fifty percent of the
165 amount that would be imposed for such taxable year on the
166 conduit income (determined before application of any other
167 allowable credits against tax): *Provided*, That when in any
168 taxable year beginning on and after the first day of January,
169 two thousand nine, the taxpayer is entitled to claim credit
170 under this article and article thirteen-d of this chapter, the
171 total amount of all credits allowable for the taxable year will
172 not reduce the corporation net income tax imposed on the
173 conduit income directly derived from the eligible taxpayer by
174 each owner below forty percent of the amount that would be
175 imposed for such taxable year on the conduit income as
176 determined before application of any other allowable credits
177 against tax;

178 (6) Small business corporations, limited liability
179 companies, partnerships and other unincorporated
180 organizations shall allocate any unused credit after
181 application of subdivisions (2), (3) and (4) of this subsection
182 among their members in the same manner as profits and
183 losses are allocated for the taxable year; and

184 (7) No credit is allowed under this article against any tax
185 imposed by article twenty-one of this chapter.

186 (c) No carryover to a subsequent taxable year or
187 carryback to a prior taxable year is allowed for the amount of
188 any unused portion of any annual credit allowance. Any
189 unused credit is forfeited.

190 (d) *Application for credit required.* --

191 (1) *Application required.* -- Notwithstanding any
192 provision of this article to the contrary, no credit is allowed
193 or may be applied under this article for any qualified
194 investment property placed in service or use until the person
195 claiming the credit makes written application to the Tax
196 Commissioner for allowance of credit as provided in this
197 section. This application shall be in the form prescribed by
198 the Tax Commissioner and shall provide the number and type
199 of jobs created, if any, by the manufacturing investment, the
200 average wage rates and benefits paid to employees filling the
201 new jobs and any other information the Tax Commissioner
202 may require. This application shall be filed with the Tax
203 Commissioner no later than the last day for filing the annual
204 return, determined by including any authorized extension of
205 time for filing the return, required under article twenty-one or
206 twenty-four of this chapter for the taxable year in which the
207 property to which the credit relates is placed in service or use.

208 (2) *Failure to file.* -- The failure to timely apply the
209 application for credit under this section results in forfeiture

210 of fifty percent of the annual credit allowance otherwise
211 allowable under this article. This penalty applies annually
212 until the application is filed.

ARTICLE 13Y. THE WEST VIRGINIA MANUFACTURING PROPERTY TAX ADJUSTMENT ACT.

§11-13Y-1. Short title.

§11-13Y-2. Definitions.

§11-13Y-3. Eligibility for tax credits; creation of the credit.

§11-13Y-4. Amount of credit allowed.

§11-13Y-5. Application of annual credit allowance.

§11-13Y-6. Availability of credit to successors.

§11-13Y-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

§11-13Y-8. Report on credit.

§11-13Y-9. Effective date.

§11-13Y-1. Short title.

1 This article shall be known and cited as the West Virginia
2 Manufacturing Property Tax Adjustment Act.

§11-13Y-2. 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) "Affiliate" means and includes all persons, as defined
8 in this section, which are affiliates of each other when either
9 directly or indirectly:

10 (A) One person controls or has the power to control the
11 other, or

12 (B) A third party or third parties control or have the
13 power to control two persons, the two thus being affiliates.
14 In determining whether concerns are independently owned
15 and operated and whether or not an affiliation exists,
16 consideration shall be given to all appropriate factors,
17 including common ownership, common management and
18 contractual relationships.

19 (2) “Commissioner” or “Tax Commissioner” means the
20 Tax Commissioner of the State of West Virginia or the Tax
21 Commissioner’s delegate.

22 (3) “Corporation” means any corporation, joint-stock
23 company or association and any business conducted by a
24 trustee or trustees wherein interest or ownership is evidenced
25 by a certificate of interest or ownership or similar written
26 instrument.

27 (4) “Delegate”, when used in reference to the Tax
28 Commissioner, means any officer or employee of the Tax
29 Division of the Department of Revenue duly authorized by
30 the Tax Commissioner directly, or indirectly by one or more
31 redelegations of authority, to perform the functions
32 mentioned or described in this article.

33 (5) “Eligible taxpayer” means any manufacturing
34 business that is subject to the tax imposed under article
35 twenty-three or twenty-four of this chapter, or both:
36 *Provided*, That taxpayers owning property assessed by the
37 Board of Public Works are not eligible taxpayers for
38 purposes of this article. “Eligible taxpayer” also means and
39 includes those members of an affiliated group of taxpayers
40 engaged in a unitary business, in which one or more members
41 of the affiliated group is a person subject to the tax imposed
42 under article twenty-three or article twenty-four of this
43 chapter, or both. Affiliates not engaged in the unitary
44 business do not qualify as eligible taxpayers.

45 (6) “Manufacturing business” means any business
46 primarily engaged in business activity classified as having a
47 sector identifier, consisting of the first two digits of the six-
48 digit North American Industry Classification System code
49 number, of thirty-one, thirty-two or thirty-three that also paid
50 ad valorem property tax on manufacturing inventory to one
51 or more West Virginia counties during the taxable year.

52 (7) “Manufacturing inventory” means and is limited to
53 raw materials, goods in process and finished goods of a
54 business primarily engaged in business activity classified as
55 having a sector identifier, consisting of the first two digits of
56 the six-digit North American Industry Classification System
57 code number, of thirty-one, thirty-two or thirty-three.

58 (8) “Natural person” or “individual” means a human
59 being.

60 (9) “Partnership” and “partner” means and includes a
61 syndicate, group, pool, joint venture or other unincorporated
62 organization through or by means of which any business,
63 financial operation or venture is carried on and which is not
64 a trust or estate, a corporation or a sole proprietorship. The
65 term “partner” includes a member in a syndicate, group, pool,
66 joint venture or organization.

67 (10) “Person” means and includes any natural person,
68 corporation, limited liability company or partnership.

69 (11) “Related entity”, “related person”, “entity related to”
70 or “person related to” means:

71 (A) An individual, corporation, partnership, affiliate,
72 association or trust or any combination or group thereof
73 controlled by the taxpayer;

74 (B) An individual, corporation, partnership, affiliate,
75 association or trust or any combination or group thereof that
76 is in control of the taxpayer;

77 (C) An individual, corporation, partnership, affiliate,
78 association or trust or any combination or group thereof
79 controlled by an individual, corporation, partnership, affiliate,
80 association or trust or any combination or group thereof that
81 is in control of the taxpayer; or

82 (D) A member of the same controlled group as the
83 taxpayer.

84 For purposes of this article, “control”, with respect to a
85 corporation, means ownership, directly or indirectly, of stock
86 possessing fifty percent or more of the total combined voting
87 power of all classes of the stock of the corporation which
88 entitles its owner to vote. “Control”, with respect to a trust,
89 means ownership, directly or indirectly, of fifty percent or
90 more of the beneficial interest in the principal or income of
91 the trust. The ownership of stock in a corporation, of a
92 capital or profits interest in a partnership or association or of
93 a beneficial interest in a trust shall be determined in
94 accordance with the rules for constructive ownership of stock
95 provided in Section 267(c) of the United States Internal
96 Revenue Code, as amended: *Provided*, That paragraph (3),
97 Section 267(c) of the United States Internal Revenue Code
98 shall not apply.

99 (12) “Tax year” or “taxable year” means the tax year of
100 the taxpayer for federal income tax purposes.

101 (13) “Taxpayer” means any person subject to the tax
102 imposed under article twenty-three or twenty-four of this
103 chapter, or both.

104 (14) “Unitary business” means a unitary business as
105 defined in section three-a, article twenty-four of this chapter.

§11-13Y-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit
2 against the taxes imposed under articles twenty-three and
3 twenty-four of this chapter, as determined under this article.

§11-13Y-4. Amount of credit allowed.

1 (a) *Credit allowed.* -- Eligible taxpayers shall be allowed
2 a credit against the tax imposed under article twenty-three or
3 twenty-four of this chapter, the application of which and the
4 amount of which shall be determined as provided in this
5 article.

6 (b) *Amount of credit.* -- The amount of credit allowed to
7 the eligible taxpayer is the amount of West Virginia *ad*
8 *valorem* property tax paid on the value of manufacturing
9 inventory of the eligible taxpayer during the corporate net
10 income tax year and business franchise tax year.

§11-13Y-5. Application of annual credit allowance.

1 (a) *Application of credit against business franchise tax.*
2 --The amount of credit allowed shall first be taken against the
3 tax liabilities of the eligible taxpayer for the current taxable
4 year imposed by article twenty-three of this chapter.

5 (b) *Application of credit against corporate net income*
6 *tax.* -- Any credit remaining after application of the credit
7 against the tax liabilities of the eligible taxpayer for the
8 current taxable year imposed by article twenty-three of this
9 chapter shall next be taken against the tax liabilities of the
10 eligible taxpayer for the current taxable year imposed by
11 article twenty-four of this chapter.

12 (c) *Carryover credit disallowed.* -- Any credit remaining
13 after application of the credit against the tax liabilities

14 specified in subsections (a) and (b) of this section for the
15 current taxable year is forfeited and shall not carry back to
16 any prior taxable year and shall not carry forward to any
17 subsequent taxable year. The credit allowed under this article
18 shall be applied after application of all other applicable tax
19 credits allowed for the taxable year against the taxes imposed
20 by article twenty-three of this chapter and after application of
21 all other applicable tax credits allowed for the taxable year
22 against the taxes imposed by article twenty-four of this
23 chapter.

24 (d) *Annual schedule.* -- For purposes of asserting the
25 credit against tax, the taxpayer shall prepare and file an
26 annual schedule showing the amount of tax paid for the
27 taxable year and the amount of credit allowed under this
28 article. The annual schedule shall set forth the information
29 and be in the form prescribed by the Tax Commissioner.

§11-13Y-6. Availability of credit to successors.

1 (a) *Transfer or sale of assets.* --

2 (1) Where there has been a transfer or sale of the business
3 assets of an eligible taxpayer to a successor which subsequent
4 to the transfer constitutes an eligible taxpayer as defined in
5 this article, which continues to operate the manufacturing
6 business in this state, and which remains subject to the taxes
7 prescribed under article twenty-three or twenty-four of this
8 chapter, or both, the successor eligible taxpayer is entitled to
9 the credit allowed under this article: *Provided*, That the
10 successor taxpayer otherwise remains in compliance with the
11 requirements of this article for entitlement to the credit.

12 (2) For any taxable year during which a transfer, or sale
13 of the business assets of an eligible taxpayer to a successor
14 eligible taxpayer under this section occurs, or a merger
15 occurs pursuant to which credit is allowed under this article,

16 the credit allowed under this article shall be apportioned
17 between the predecessor eligible taxpayer and the successor
18 eligible taxpayer based on the number of days during the
19 taxable year that each taxpayer based and the number of days
20 during the taxable year that each taxpayer owned the business
21 assets transferred.

22 (b) *Stock purchases.* -- Where a corporation which is an
23 eligible taxpayer entitled to the credit allowed under this
24 article is purchased through a stock purchase by a new owner
25 and remains a legal entity so as to retain its corporate
26 identity, the entitlement of that corporation to the credit
27 allowed under this article will not be affected by the
28 ownership change: *Provided*, That the corporation otherwise
29 remains in compliance with the requirements of this article
30 for entitlement to the credit.

31 (c) *Mergers.* --

32 (1) Where a corporation or other entity which is an
33 eligible taxpayer entitled to the credit allowed under this
34 article is merged with another corporation or entity, the
35 surviving corporation or entity shall be entitled to the credit
36 to which the predecessor eligible taxpayer was originally
37 entitled: *Provided*, That the surviving corporation or entity
38 otherwise complies with the provisions of this article.

39 (2) The amount of credit available in any taxable year
40 during which a merger occurs shall be apportioned between
41 the predecessor eligible taxpayer and the successor eligible
42 taxpayer based on the number of days during the taxable year
43 that each owned the transferred business assets.

44 (d) No provision of this section or of this article shall be
45 construed to allow sales or other transfers of the tax credit
46 allowed under this article. The credit allowed under this
47 article can be transferred only in circumstances where there
48 is a valid successorship as described under this section.

§11-13Y-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any person
2 or entity has taken the credit against tax allowed under this
3 article and was not entitled to take the credit, then the credit
4 improperly taken under this article shall be recaptured.
5 Amended returns shall be filed for any tax year for which the
6 credit was improperly taken. Any additional taxes due under
7 this chapter shall be remitted with the amended return or
8 returns filed with the Tax Commissioner, along with interest,
9 as provided in section seventeen, article ten of this chapter
10 and such other penalties and additions to tax as may be
11 applicable pursuant to the provisions of article ten of this
12 chapter.

13 (b) Notwithstanding the provisions of article ten of this
14 chapter, penalties and additions to tax imposed under article
15 ten of this chapter may be waived at the discretion of the Tax
16 Commissioner: *Provided*, That interest is not subject to
17 waiver.

18 (c) Notwithstanding the provisions of article ten of this
19 chapter, the statute of limitations for the issuance of an
20 assessment of tax by the Tax Commissioner shall be five
21 years from the date of filing of any tax return on which this
22 credit was taken or five years from the date of payment of
23 any tax liability calculated pursuant to the assertion of the
24 credit allowed under this article, whichever is later.

§11-13Y-8. Report on credit.

1 (a) The Tax Commissioner shall provide to the Joint
2 Committee on Government and Finance by the first day of
3 July, two thousand eleven, and on the first day of July of
4 each year thereafter, a report detailing the amount of credit
5 claimed pursuant to this article. The report is to include the

6 amount of credit claimed against the business franchise tax
7 and the amount of credit claimed against the corporate net
8 income tax.

9 (b) Taxpayers claiming the credit shall provide the
10 information as the Tax Commissioner may require to prepare
11 the report: *Provided*, That the information is subject to the
12 confidentiality and disclosure provisions of sections five-d
13 and five-s, article ten of this chapter.

§11-13Y-9. Effective date.

1 This article shall be effective for corporate net income tax
2 years and business franchise tax years beginning on or after
3 the first day of January, two thousand nine.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-5a. Special apportionment rules - financial organizations.

§11-23-6. Imposition of tax; change in rate of tax.

§11-23-17b. Application of tax credits.

§11-23-5a. Special apportionment rules - financial organizations.

1 (a) *General.* -- The Legislature hereby finds that the
2 general formula set forth in section five of this article for
3 apportioning the tax base of corporations and partnerships
4 taxable in this state as well as in another state is inappropriate
5 for use by financial organizations due to the particular
6 characteristics of those organizations and the manner in
7 which their business is conducted. Accordingly, the general
8 formula set forth in section five of this article may not be
9 used to apportion the tax base of financial organizations
10 which shall use only the apportionment formula and methods
11 set forth in this section.

12 (b) *West Virginia financial organizations taxable in*
13 *another state.* -- A financial organization that has its

14 commercial domicile in this state and which is taxable in
15 another state may not apportion its tax base as provided in
16 section five of this article, but shall apportion its tax base to
17 this state by multiplying it by the special gross receipts factor
18 calculated as provided in subsection (f) of this section. The
19 product of this multiplication is the portion of its tax base that
20 is attributable to business activity in this state.

21 (c) *Out-of-state financial organizations with business*
22 *activities in this state.* -- A financial organization that does
23 not have its commercial domicile in this state and which
24 regularly engages in business in this state shall apportion its
25 tax base to this state by multiplying it by the special gross
26 receipts factor calculated as provided in subsection (f) of this
27 section. The product of this multiplication is the portion of
28 its tax base that is attributable to business activity in this
29 state.

30 (d) *Engaging in business -- nexus presumptions and*
31 *exclusions.* -- A financial organization that has its
32 commercial domicile in another state is presumed to be
33 regularly engaging in business in this state if during any year
34 it obtains or solicits business with twenty or more persons
35 within this state, or if the sum of the value of its gross
36 receipts attributable to sources in this state equals or exceeds
37 one hundred thousand dollars. However, gross receipts from
38 the following types of property, as well as those contacts with
39 this state reasonably and exclusively required to evaluate and
40 complete the acquisition or disposition of the property, the
41 servicing of the property or the income from it, the collection
42 of income from the property or the acquisition or liquidation
43 of collateral relating to the property shall not be a factor in
44 determining whether the owner is engaging in business in this
45 state:

46 (1) An interest in a real estate mortgage investment
47 conduit, a real estate investment trust or a regulated
48 investment company;

49 (2) An interest in a loan backed security representing
50 ownership or participation in a pool of promissory notes or
51 certificates of interest that provide for payments in relation to
52 payments or reasonable projections of payments on the notes
53 or certificates;

54 (3) An interest in a loan or other asset from which the
55 interest is attributed to a consumer loan, a commercial loan
56 or a secured commercial loan and in which the payment
57 obligations were solicited and entered into by a person that is
58 independent, and not acting on behalf, of the owner;

59 (4) An interest in the right to service or collect income
60 from a loan or other asset from which interest on the loan is
61 attributed as a loan described in the previous paragraph and
62 in which the payment obligations were solicited and entered
63 into by a person that is independent, and not acting on behalf,
64 of the owner; or

65 (5) Any amounts held in an escrow or trust account with
66 respect to property described above.

67 (e) *Definitions.* -- For purposes of this section:

68 (1) "Commercial domicile" means the same as that term
69 is defined in section three of this article.

70 (2) "Deposit" means: (A) The unpaid balance of money
71 or its equivalent received or held by a financial organization
72 in the usual course of business and for which it has given or
73 it is obligated to give credit, either conditionally or
74 unconditionally, to a commercial, checking, savings, time or
75 thrift account whether or not advance notice is required to
76 withdraw the credit funds, or which is evidenced by a
77 certificate of deposit, thrift certificate, investment certificate
78 or certificate of indebtedness, or other similar name, or a
79 check or draft drawn against a deposit account and certified
80 by the financial organization, or a letter of credit or a

81 traveler's check on which the financial organization is
82 primarily liable: *Provided*, That without limiting the
83 generality of the term "money or its equivalent", any account
84 or instrument must be regarded as evidencing the receipt of
85 the equivalent of money when credited or issued in exchange
86 for checks or drafts or for a promissory note upon which the
87 person obtaining any credit or instrument is primarily or
88 secondarily liable or for a charge against a deposit account or
89 in settlement of checks, drafts or other instruments forwarded
90 to the bank for collection;

91 (B) Trust funds received or held by a financial
92 organization, whether held in the trust department or held or
93 deposited in any other department of the financial
94 organization;

95 (C) Money received or held by a financial organization
96 or the credit given for money or its equivalent received or
97 held by a financial organization in the usual course of
98 business for a special or specific purpose, regardless of the
99 legal relationship thereby established, including, without
100 being limited to, escrow funds, funds held as security for an
101 obligation due the financial organization or other, including
102 funds held as dealers' reserves, or for securities loaned by the
103 financial organization, funds deposited by a debtor to meet
104 maturing obligations, funds deposited as advance payment on
105 subscriptions to United States government securities, funds
106 held for distribution or purchase of securities, funds held to
107 meet its acceptances or letters of credit and withheld taxes:
108 *Provided*, That there shall not be included funds which are
109 received by the financial organization for immediate
110 application to the reduction of an indebtedness to the
111 receiving financial organization or under condition that the
112 receipt thereof immediately reduces or extinguishes an
113 indebtedness;

114 (D) Outstanding drafts, including advice or authorization
115 to charge a financial organization's balance in another

116 organization, cashier's checks, money orders or other officer's
117 checks issued in the usual course of business for any purpose,
118 but not including those issued in payment for services,
119 dividends or purchases or other costs or expenses of the
120 financial organization itself; and

121 (E) Money or its equivalent held as a credit balance by a
122 financial organization on behalf of its customer if the entity
123 is engaged in soliciting and holding balances in the regular
124 course of its business.

125 (3) "Financial organization" means a financial
126 organization as defined in subdivision (13), subsection (b),
127 section three of this article, as well as a partnership which
128 derives more than fifty percent of its gross business income
129 from one or more of the activities enumerated in
130 subparagraphs (1) through (6), inclusive, paragraph (C) of
131 said subdivision.

132 (4) "Sales" means: For purposes of apportionment under
133 this section, the gross receipts of a financial organization
134 included in the gross receipts factor described in subsection
135 (f) of this section, regardless of their source.

136 (f) *Special gross receipts factor.* -- The gross receipts
137 factor is a fraction, the numerator of which is the total gross
138 receipts of the taxpayer from sources within this state during
139 the taxable year and the denominator of which is the total
140 gross receipts of the taxpayer wherever earned during the
141 taxable year: *Provided*, That neither the numerator nor the
142 denominator of the gross receipts factor shall include receipts
143 from obligations described in paragraphs (A), (B), (C) and
144 (D), subdivision (1), subsection (f), section six, article
145 twenty-four of this chapter.

146 (1) *Numerator.* -- The numerator of the gross receipts
147 factor shall include, in addition to items otherwise includable

148 in the sales factor under section five of this article, the
149 following:

150 (A) Gross receipts from the lease or rental of real or
151 tangible personal property, whether as the economic
152 equivalent of an extension of credit or otherwise if the
153 property is located in this state;

154 (B) Interest income and other receipts from assets in the
155 nature of loans which are secured primarily by real estate or
156 tangible personal property if the security property is located
157 in the state. In the event that the security property is also
158 located in one or more other states, receipts shall be
159 presumed to be from sources within this state, subject to
160 rebuttal based upon factors described in rules to be
161 promulgated by the Tax Commissioner, including the factor
162 that the proceeds of any loans were applied and used by the
163 borrower entirely outside of this state;

164 (C) Interest income and other receipts from consumer
165 loans which are unsecured or are secured by intangible
166 property that are made to residents of this state, whether at a
167 place of business, by traveling loan officer, by mail, by
168 telephone or other electronic means or otherwise;

169 (D) Interest income and other receipts from commercial
170 loans and installment obligations which are unsecured or are
171 secured by intangible property if and to the extent that the
172 borrower or debtor is a resident of or is domiciled in this
173 state: *Provided*, That receipts are presumed to be from
174 sources in this state and the presumption may be overcome
175 by reference to factors described in rules to be promulgated
176 by the Tax Commissioner, including the factor that the
177 proceeds of any loans were applied and used by the borrower
178 entirely outside of this state;

179 (E) Interest income and other receipts from a financial
180 organization's syndication and participation in loans, under

181 the rules set forth in paragraphs (A) through (D), inclusive,
182 of this subdivision;

183 (F) Interest income and other receipts, including service
184 charges, from financial institution credit card and travel and
185 entertainment credit card receivables and credit card holders'
186 fees if the borrower or debtor is a resident of this state or if
187 the billings for any receipts are regularly sent to an address
188 in this state;

189 (G) Merchant discount income derived from financial
190 institution credit card holder transactions with a merchant
191 located in this state. In the case of merchants located within
192 and without this state, only receipts from merchant discounts
193 attributable to sales made from locations within this state
194 shall be attributed to this state. It shall be presumed, subject
195 to rebuttal, that the location of a merchant is the address
196 shown on the invoice submitted by the merchant to the
197 taxpayer;

198 (H) Gross receipts from the performance of services are
199 attributed to this state if:

200 (i) The service receipts are loan-related fees, including
201 loan servicing fees, and the borrower resides in this state,
202 except that, at the taxpayer's election, receipts from loan-
203 related fees which are either: (I) "Pooled" or aggregated for
204 collective financial accounting treatment; or (II) manually
205 written as nonrecurring extraordinary charges to be processed
206 directly to the general ledger may either be attributed to a
207 state based upon the borrowers' residences or upon the ratio
208 that total interest sourced to that state bears to total interest
209 from all sources;

210 (ii) The service receipts are deposit-related fees and the
211 depositor resides in this state, except that, at the taxpayer's
212 election, receipts from deposit-related fees which are either:

213 (I) "Pooled" or aggregated for collective financial accounting
214 treatment; or (II) manually written as nonrecurring
215 extraordinary charges to be processed directly to the general
216 ledger may either be attributed to a state based upon the
217 depositors' residences or upon the ratio that total deposits
218 sourced to that state bears to total deposits from all sources;

219 (iii) The service receipt is a brokerage fee and the account
220 holder is a resident of this state;

221 (iv) The service receipts are fees related to estate or trust
222 services and the estate's decedent was a resident of this state
223 immediately before death or the grantor who either funded or
224 established the trust is a resident of this state; or

225 (v) The service receipt is associated with the performance
226 of any other service not identified above and the service is
227 performed for an individual resident of, or for a corporation
228 or other business domiciled in, this state and the economic
229 benefit of service is received in this state;

230 (I) Gross receipts from the issuance of travelers' checks
231 and money orders if checks and money orders are purchased
232 in this state; and

233 (J) All other receipts not attributed by this rule to a state
234 in which the taxpayer is taxable shall be attributed pursuant
235 to the laws of the state of the taxpayer's commercial domicile.

236 (2) *Denominator.* -- The denominator of the gross
237 receipts factor shall include all of the taxpayer's gross
238 receipts from transactions of the kind included in the
239 numerator, but without regard to their source or situs.

240 (g) *Limited tax credit for certain financial organizations*
241 *for certain periods.* -- A credit shall be allowed against the
242 tax imposed by this article on a financial organization with its

243 commercial domicile in this state that acquires a financial
244 organization that does not have its commercial domicile in
245 this state: *Provided*, That the goodwill associated with the
246 acquisition is first added to the net equity of the financial
247 organization with its commercial domicile in this state on or
248 after the first day of January two thousand eight: *Provided*,
249 *however*, That the prior recordation of the goodwill
250 associated with the acquisition on the balance sheet of a
251 financial organization that does not have its commercial
252 domicile in this state shall not affect, limit or reduce the
253 availability of the credit authorized by this subsection. The
254 credit shall equal fifty percent of the goodwill associated with
255 the acquisition in the amount first recorded on the balance
256 sheet of the financial organization with its commercial
257 domicile in this state, multiplied by the tax rate applicable to
258 the financial organization under this article for the taxable
259 year. For purposes of this subsection, the term “goodwill”
260 shall have the meaning set forth in the capital adequacy
261 guidelines for bank holding companies established by the
262 Federal Reserve Board in 12 C. F. R. 225, Appendix A, as
263 the same may be revised from time to time.

264 (h) *Effective date.* -- The provisions of this section
265 enacted in chapter one hundred sixty-seven, Acts of the
266 Legislature, one thousand nine hundred ninety-one, shall
267 apply to all taxable years beginning on or after the first day
268 of January, one thousand nine hundred ninety-one. The
269 amendments to this section, enacted in the year one thousand
270 nine hundred ninety-six, shall apply to taxable years
271 beginning after the thirty-first day of December, one
272 thousand nine hundred ninety-five. The amendments to this
273 section, enacted in the year two thousand eight, shall apply to
274 taxable years beginning after the thirty-first day of
275 December, two thousand eight: *Provided*, That the
276 amendments to subsection (g) of this section, enacted in the
277 year two thousand eight, shall apply to taxable years
278 beginning after the thirty-first day of December, two
279 thousand seven.

§11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General.* -- An annual business franchise tax is
2 hereby imposed on the privilege of doing business in this
3 state and in respect of the benefits and protection conferred.
4 Such tax shall be collected from every domestic corporation,
5 every corporation having its commercial domicile in this
6 state, every foreign or domestic corporation owning or
7 leasing real or tangible personal property located in this state
8 or doing business in this state and from every partnership
9 owning or leasing real or tangible personal property located
10 in this state or doing business in this state effective on and
11 after the first day of July, one thousand nine hundred eighty-
12 seven.

13 (b) *Amount of tax and rate; effective date.* --

14 (1) On and after the first day of July, one thousand nine
15 hundred eighty-seven, the amount of tax shall be the greater
16 of fifty dollars or fifty-five one hundredths of one percent of
17 the value of the tax base, as determined under this article:
18 *Provided,* That when the taxpayer's first taxable year under
19 this article is a short taxable year, the taxpayer's liability
20 shall be prorated based upon the ratio which the number of
21 months in which such short taxable year bears to twelve:
22 *Provided, however,* That this subdivision shall not apply to
23 taxable years beginning on or after the first day of January,
24 one thousand nine hundred eighty-nine.

25 (2) *Taxable years after the thirty-first day of December,*
26 *one thousand nine hundred eighty-eight.* -- For taxable years
27 beginning on or after the first day of January, one thousand
28 nine hundred eighty-nine, the amount of tax due under this
29 article shall be the greater of fifty dollars or seventy-five one
30 hundredths of one percent of the value of the tax base as
31 determined under this article.

32 (3) *Taxable years after the thirtieth day of June, one*
33 *thousand nine hundred ninety-seven.* -- For taxable years

34 beginning on or after the first day of July, one thousand nine
35 hundred ninety-seven, the amount of tax due under this
36 article shall be the greater of fifty dollars or seventy
37 hundredths of one percent of the value of the tax base as
38 determined under this article.

39 (4) *Taxable years after the thirty-first day of December,*
40 *two thousand six.* -- For taxable years beginning on or after
41 the first day of January, two thousand seven, the amount of
42 tax due under this article shall be the greater of fifty dollars
43 or fifty-five one hundredths of one percent of the value of the
44 tax base as determined under this article.

45 (5) *Taxable years after the thirty-first day of December,*
46 *two thousand eight.* -- For taxable years beginning on or
47 after the first day of January, two thousand nine, the amount
48 of tax due under this article shall be the greater of fifty
49 dollars or forty-eight one hundredths of one percent of the
50 value of the tax base as determined under this article.

51 (6) *Taxable years after the thirty-first day of December,*
52 *two thousand nine.* -- For taxable years beginning on or after
53 the first day of January, two thousand ten, the amount of tax
54 due under this article shall be the greater of fifty dollars or
55 forty-one one hundredths of one percent of the value of the
56 tax base as determined under this article.

57 (7) *Taxable years after the thirty-first day of December,*
58 *two thousand ten.* -- For taxable years beginning on or after
59 the first day of January, two thousand eleven, the amount of
60 tax due under this article shall be the greater of fifty dollars
61 or thirty-four one hundredths of one percent of the value of
62 the tax base as determined under this article.

63 (8) *Taxable years after the thirty-first day of December,*
64 *two thousand eleven.* -- For taxable years beginning on or
65 after the first day of January, two thousand twelve, the

66 amount of tax due under this article shall be the greater of
67 fifty dollars or twenty-seven one hundredths of one percent
68 of the value of the tax base as determined under this article.

69 (9) *Taxable years after the thirty-first day of December,*
70 *two thousand twelve.* -- For taxable years beginning on or
71 after the first day of January, two thousand thirteen, the
72 amount of tax due under this article shall be the greater of
73 fifty dollars or twenty one hundredths of one percent of the
74 value of the tax base as determined under this article.

75 (10) *Taxable years after the thirty-first day of December,*
76 *two thousand thirteen.* -- For taxable years beginning on or
77 after the first day of January, two thousand fourteen, the
78 amount of tax due under this article shall be the greater of
79 fifty dollars or ten one hundredths of one percent of the value
80 of the tax base as determined under this article.

81 (11) *Taxable years after the thirty-first day of December,*
82 *two thousand fourteen.* -- For taxable years beginning on or
83 after the first day of January, two thousand fifteen, there shall
84 be no tax due under the provisions of this article.

85 (c) *Short taxable years.* -- When the taxpayer's taxable
86 year for federal income tax purposes is a short taxable year,
87 the tax determined by application of the tax rate to the
88 taxpayer's tax base shall be prorated based upon the ratio
89 which the number of months in such short taxable year bears
90 to twelve: *Provided,* That when the taxpayer's first taxable
91 year under this article is less than twelve months, the
92 taxpayer's liability shall be prorated based upon the ratio
93 which the number of months the taxpayer was doing business
94 in this state bears to twelve, but in no event shall the tax due
95 be less than fifty dollars.

§11-23-17b. Application of tax credits.

1 Except where otherwise provided, no tax credit earned by
2 one member of the combined group, but not fully used by or

3 allowed to that member, may be used, in whole or in part, by
4 another member of the group or applied, in whole or in part,
5 against the tax of another member of the combined group;
6 and a tax credit carried over into a subsequent year as to the
7 member that incurred it, and available as a credit to that
8 member in a subsequent year, will be considered in the
9 computation of the capital of that member in the subsequent
10 year regardless of the composition of that capital as
11 apportioned, allocated or wholly within this state: *Provided*,
12 That unused and unexpired economic development tax
13 credits that were earned during a tax year in which the
14 taxpayer filed a consolidated return under this article may, if
15 otherwise allowed within the statutory limitations applicable
16 to the tax credit, be used, in whole or in part, or applied, in
17 whole or in part, against the taxes imposed by this article on
18 any member of the taxpayer's combined group to the extent
19 the credits would have been allowed had the taxpayer
20 continued to file a consolidated return. For purposes of this
21 section the term economic development tax credit means and
22 is limited to a tax credit asserted on a tax return under article
23 thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g,
24 thirteen-j, thirteen-q, thirteen-r or thirteen-s of this chapter or
25 under article one, chapter five-e of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

- §11-24-3a. Specific terms defined.
- §11-24-3b. General meaning of definition of the term tax haven for specified jurisdictions.
- §11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.
- §11-24-7. Allocation and apportionment.
- §11-24-7b. Special apportionment rules - financial organizations.
- §11-24-9b. Limited tax credits - Financial organizations.
- §11-24-13a. Method of filing for business taxes.
- §11-24-13c. Determination of taxable income or loss using combined report.
- §11-24-13d. Determination of the business income of the combined group.
- §11-24-13f. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.
- §11-24-42. Effective date.

***§11-24-3a. Specific terms defined.**

1 For purposes of this article:

2 (1) *Business income.* -- The term “business income”
3 means income arising from transactions and activity in the
4 regular course of the taxpayer’s trade or business and
5 includes income from tangible and intangible property if the
6 acquisition, management and disposition of the property or
7 the rendering of services in connection therewith constitute
8 integral parts of the taxpayer’s regular trade or business
9 operations and includes all income which is apportionable
10 under the Constitution of the United States.

11 (2) “Combined group” means the group of all persons
12 whose income and apportionment factors are required to be
13 taken into account pursuant to subsection (a) or (b), section
14 thirteen-a of this article in determining the taxpayer’s share
15 of the net business income or loss apportionable to this state.

16 (3) *Commercial domicile.* -- The term “commercial
17 domicile” means the principal place from which the trade or
18 business of the taxpayer is directed or managed: *Provided,*
19 That the commercial domicile of a financial organization,
20 which is subject to regulation as such, shall be at the place
21 designated as its principal office with its regulating authority.

22 (4) *Compensation.* -- The term “compensation” means
23 wages, salaries, commissions and any other form of
24 remuneration paid to employees for personal services.

25 (5) *Corporation.* -- “Corporation” means any corporation
26 as defined by the laws of this state or organization of any
27 kind treated as a corporation for tax purposes under the laws
28 of this state, wherever located, which if it were doing

*CLERK’S NOTE: This section was also amended by HB 4420 (Chapter 222),
which passed subsequent to this act.

29 business in this state would be subject to the tax imposed by
30 this article. The business conducted by a partnership which
31 is directly or indirectly held by a corporation shall be
32 considered the business of the corporation to the extent of the
33 corporation's distributive share of the partnership income,
34 inclusive of guaranteed payments to the extent prescribed by
35 regulation. The term "corporation" includes a joint-stock
36 company and any association or other organization which is
37 taxable as a corporation under the federal income tax law.

38 (6) *Delegate*. -- The term "delegate" in the phrase "or his
39 or her delegate", when used in reference to the Tax
40 Commissioner, means any officer or employee of the State
41 Tax Department duly authorized by the Tax Commissioner
42 directly, or indirectly by one or more redelegations of
43 authority, to perform the functions mentioned or described in
44 this article or regulations promulgated thereunder.

45 (7) *Domestic corporation*. -- The term "domestic
46 corporation" means any corporation organized under the laws
47 of West Virginia and certain corporations organized under
48 the laws of the State of Virginia before the twentieth day of
49 June, one thousand eight hundred sixty-three. Every other
50 corporation is a foreign corporation.

51 (8) *Engaging in business*. -- The term "engaging in
52 business" or "doing business" means any activity of a
53 corporation which enjoys the benefits and protection of
54 government and laws in this state.

55 (9) *Federal Form 1120*. -- The term "Federal Form
56 1120" means the annual federal income tax return of any
57 corporation made pursuant to the United States Internal
58 Revenue Code of 1986, as amended, or in successor
59 provisions of the laws of the United States, in respect to the
60 federal taxable income of a corporation, and filed with the
61 federal Internal Revenue Service. In the case of a
62 corporation that elects to file a federal income tax return as
63 part of an affiliated group, but files as a separate corporation

64 under this article, then as to such corporation Federal Form
65 1120 means its pro forma Federal Form 1120.

66 (10) *Fiduciary*. -- The term “fiduciary” means, and
67 includes, a guardian, trustee, executor, administrator,
68 receiver, conservator or any person acting in any fiduciary
69 capacity for any person.

70 (11) *Financial organization*. -- The term “financial
71 organization” means:

72 (A) A holding company or a subsidiary thereof. As used
73 in this section “holding company” means a corporation
74 registered under the federal Bank Holding Company Act of
75 1956 or registered as a savings and loan holding company
76 other than a diversified savings and loan holding company as
77 defined in Section 408(a)(1)(F) of the federal National
78 Housing Act, 12 U. S. C. §1730(a)(1)(F);

79 (B) A regulated financial corporation or a subsidiary
80 thereof. As used in this section “regulated financial
81 corporation” means:

82 (i) An institution, the deposits, shares or accounts of
83 which are insured under the Federal Deposit Insurance Act or
84 by the federal Savings and Loan Insurance Corporation;

85 (ii) An institution that is a member of a federal home loan
86 bank;

87 (iii) Any other bank or thrift institution incorporated or
88 organized under the laws of a state that is engaged in the
89 business of receiving deposits;

90 (iv) A credit union incorporated and organized under the
91 laws of this state;

92 (v) A production credit association organized under 12 U.
93 S. C. §2071;

94 (vi) A corporation organized under 12 U. S. C. §611
95 through §631 (an Edge Act corporation); or

96 (vii) A federal or state agency or branch of a foreign bank
97 as defined in 12 U. S. C. §3101; or

98 (C) A corporation which derives more than fifty percent
99 of its gross business income from one or more of the
100 following activities:

101 (i) Making, acquiring, selling or servicing loans or
102 extensions of credit. Loans and extensions of credit include:

103 (I) Secured or unsecured consumer loans;

104 (II) Installment obligations;

105 (III) Mortgages or other loans secured by real estate or
106 tangible personal property;

107 (IV) Credit card loans;

108 (V) Secured and unsecured commercial loans of any type;
109 and

110 (VI) Loans arising in factoring.

111 (ii) Leasing or acting as an agent, broker or advisor in
112 connection with leasing real and personal property that is the
113 economic equivalent of an extension of credit as defined by
114 the Federal Reserve Board in 12 CFR 225.25(b)(5).

115 (iii) Operating a credit card business.

116 (iv) Rendering estate or trust services.

117 (v) Receiving, maintaining or otherwise handling
118 deposits.

119 (vi) Engaging in any other activity with an economic
120 effect comparable to those activities described in
121 subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

122 (12) *Fiscal year.* -- The term “fiscal year” means an
123 accounting period of twelve months ending on any day other
124 than the last day of December and on the basis of which the
125 taxpayer is required to report for federal income tax purposes.

126 (13) *Includes and including.* -- The terms “includes” and
127 “including”, when used in a definition contained in this
128 article, do not exclude other things otherwise within the
129 meaning of the term being defined.

130 (14) *Insurance company.* -- The term “insurance
131 company” means any corporation subject to taxation under
132 section twenty-two, article three, chapter twenty-nine of this
133 code or chapter thirty-three of this code or an insurance
134 carrier subject to the surcharge imposed by subdivision (1) or
135 (3), subsection (f), section three, article two-c, chapter
136 twenty-three of this code or any corporation that would be
137 subject to taxation under any of those provisions were its
138 business transacted in this state.

139 (15) "Internal Revenue Code" means the Internal
140 Revenue Code as defined in section three of this article,
141 without regard to application of federal treaties unless
142 expressly made applicable to states of the United States.

143 (16) *Nonbusiness income.* -- The term “nonbusiness
144 income” means all income other than business income.

145 (17) “Partnership” means a general or limited partnership
146 or organization of any kind treated as a partnership for tax
147 purposes under the laws of this state.

148 (18) *Person.* -- The term “person” is considered
149 interchangeable with the term “corporation” in this section.

150 The term “person” means any individual, firm, partnership,
151 general partner of a partnership, limited liability company,
152 registered limited liability partnership, foreign limited
153 liability partnership, association, corporation whether or not
154 the corporation is, or would be if doing business in this state,
155 subject to the tax imposed by this article, company,
156 syndicate, estate, trust, business trust, trustee, trustee in
157 bankruptcy, receiver, executor, administrator, assignee or
158 organization of any kind.

159 (19) *Pro forma return.* -- The term “pro forma return”
160 when used in this article means the return which the taxpayer
161 would have filed with the Internal Revenue Service had it not
162 elected to file federally as part of an affiliated group.

163 (20) *Public utility.* -- The term “public utility” means any
164 business activity to which the jurisdiction of the Public
165 Service Commission of West Virginia extends under section
166 one, article two, chapter twenty-four of this code.

167 (21) *Sales.* -- The term “sales” means all gross receipts
168 of the taxpayer that are “business income” as defined in this
169 section.

170 (22) *State.* -- The term “state” means any state of the
171 United States, the District of Columbia, the Commonwealth
172 of Puerto Rico, any territory or possession of the United
173 States and any foreign country or political subdivision
174 thereof.

175 (23) *Taxable year, tax year.* -- The term “taxable year”
176 or “tax year” means the taxable year for which the taxable
177 income of the taxpayer is computed under the federal income
178 tax law.

179 (24) *Tax.* -- The term “tax” includes, within its meaning,
180 interest and additions to tax, unless the intention to give it a
181 more limited meaning is disclosed by the context.

182 (25) *Tax Commissioner.* -- The term “Tax
183 Commissioner” means the Tax Commissioner of the State of
184 West Virginia or his or her delegate.

185 (26) “Tax haven” means a jurisdiction that, for a
186 particular tax year in question: (A) Is identified by the
187 Organization for Economic Cooperation and Development as
188 a tax haven or as having a harmful preferential tax regime; or
189 (B) a jurisdiction that has no, or nominal, effective tax on the
190 relevant income and: (i) That has laws or practices that
191 prevent effective exchange of information for tax purposes
192 with other governments regarding taxpayers subject to, or
193 benefitting from, the tax regime; (ii) that lacks transparency,
194 for purposes of this definition, a tax regime lacks
195 transparency if the details of legislative, legal or
196 administrative provisions are not open to public scrutiny and
197 apparent or are not consistently applied among similarly
198 situated taxpayers; (iii) facilitates the establishment of
199 foreign-owned entities without the need for a local
200 substantive presence or prohibits these entities from having
201 any commercial impact on the local economy; (iv) explicitly
202 or implicitly excludes the jurisdiction’s resident taxpayers
203 from taking advantage of the tax regime’s benefits or
204 prohibits enterprises that benefit from the regime from
205 operating in the jurisdiction’s domestic market; or (v) has
206 created a tax regime which is favorable for tax avoidance,
207 based upon an overall assessment of relevant factors,
208 including whether the jurisdiction has a significant untaxed
209 offshore financial or other services sector relative to its
210 overall economy. For purposes of this definition, the phrase
211 “tax regime” means a set or system of rules, laws, regulations
212 or practices by which taxes are imposed on any person,
213 corporation or entity, or on any income, property, incident,
214 indicia or activity pursuant to governmental authority.

215 (27) *Taxpayer.* -- The term “taxpayer” means any person
216 subject to the tax imposed by this article.

217 (28) *This code*. -- The term “this code” means the Code
218 of West Virginia, one thousand nine hundred thirty-one, as
219 amended.

220 (29) *This state*. -- The term “this state” means the State
221 of West Virginia.

222 (30) “United States” means the United States of America
223 and includes all of the states of the United States, the District
224 of Columbia and United States territories and possessions.

225 (31) “Unitary business” means a single economic
226 enterprise that is made up either of separate parts of a single
227 business entity or of a commonly controlled group of
228 business entities that are sufficiently interdependent,
229 integrated and interrelated through their activities so as to
230 provide a synergy and mutual benefit that produces a sharing
231 or exchange of value among them and a significant flow of
232 value to the separate parts. For purposes of this article and
233 article twenty-three of this chapter, any business conducted
234 by a partnership shall be treated as conducted by its partners,
235 whether directly held or indirectly held through a series of
236 partnerships, to the extent of the partner's distributive share
237 of the partnership's income, regardless of the percentage of
238 the partner's ownership interest or the percentage of its
239 distributive or any other share of partnership income. A
240 business conducted directly or indirectly by one corporation
241 through its direct or indirect interest in a partnership is
242 unitary with that portion of a business conducted by one or
243 more other corporations through their direct or indirect
244 interest in a partnership if there is a synergy and mutual
245 benefit that produces a sharing or exchange of value among
246 them and a significant flow of value to the separate parts and
247 the corporations are members of the same commonly
248 controlled group.

249 (32) *West Virginia taxable income*. -- The term “West
250 Virginia taxable income” means the taxable income of a

251 corporation as defined by the laws of the United States for
252 federal income tax purposes, adjusted, as provided in this
253 article: *Provided*, That in the case of a corporation having
254 income from business activity which is taxable without this
255 state, its “West Virginia taxable income” shall be the portion
256 of its taxable income as defined and adjusted as is allocated
257 or apportioned to this state under the provisions of this
258 article.

**§11-24-3b. General meaning of definition of the term tax haven
for specified jurisdictions.**

1 (a) *General*. -- For purposes of this article and article
2 twenty-three of this chapter, a jurisdiction that, for a
3 particular tax year in question is identified by the
4 Organization for Economic Cooperation and Development as
5 a tax haven or as having a harmful preferential tax regime
6 means and includes any and all jurisdictions so identified as
7 of the most recent list or compilation of jurisdictions issued,
8 published or adopted by the Organization for Economic
9 Cooperation and Development on or before the effective date
10 of this section.

11 (b) *Effective date*. -- This section as enacted in the year
12 two thousand eight shall be effective on passage.

**§11-24-4. Imposition of primary tax and rate thereof; effective
and termination dates.**

1 *Primary tax*. -- (1) In the case of taxable periods
2 beginning after the thirtieth day of June, one thousand nine
3 hundred sixty-seven, and ending prior to the first day of
4 January, one thousand nine hundred eighty-three, a tax is
5 hereby imposed for each taxable year at the rate of six
6 percent per annum on the West Virginia taxable income of
7 every domestic or foreign corporation engaging in business

8 in this state or deriving income from property, activity or
9 other sources in this state, except corporations exempt under
10 section five.

11 (2) In the case of taxable periods beginning on or after
12 the first day of January, one thousand nine hundred eighty-
13 three, and ending prior to the first day of July, one thousand
14 nine hundred eighty-seven, a tax is hereby imposed for each
15 taxable year on the West Virginia taxable income of every
16 domestic or foreign corporation engaging in business in this
17 state or deriving income from property, activity or other
18 sources in this state, except corporations exempt under
19 section five of this article, and any banks, banking
20 associations or corporations, trust companies, building and
21 loan associations and savings and loan associations, at the
22 rates which follow:

23 (A) On taxable income not in excess of fifty thousand
24 dollars, the rate of six percent; and

25 (B) On taxable income in excess of fifty thousand dollars,
26 the rate of seven percent.

27 (3) In the case of taxable periods beginning on or after
28 the first day of July, one thousand nine hundred eighty-seven,
29 a tax is hereby imposed for each taxable year on the West
30 Virginia taxable income of every domestic or foreign
31 corporation engaging in business in this state or deriving
32 income from property, activity or other sources in this state,
33 except corporations exempt under section five of this article,
34 at the rate of nine and three-quarters percent. Beginning the
35 first day of July, one thousand nine hundred eighty-eight, and
36 on each first day of July thereafter for four successive
37 calendar years, the rate shall be reduced by fifteen one
38 hundredths of one percent per year, with such rate to be nine
39 percent on and after the first day of July, one thousand nine
40 hundred ninety-two.

41 (4) In the case of taxable periods beginning on or after
42 the first day of January, two thousand seven, a tax is hereby
43 imposed for each taxable year on the West Virginia taxable
44 income of every domestic or foreign corporation engaging in
45 business in this state or deriving income from property,
46 activity or other sources in this state, except corporations
47 exempt under section five of this article, at the rate of eight
48 and three-quarters percent.

49 (5) In the case of taxable periods beginning on or after
50 the first day of January, two thousand nine, a tax is hereby
51 imposed for each taxable year on the West Virginia taxable
52 income of every domestic or foreign corporation engaging in
53 business in this state or deriving income from property,
54 activity or other sources in this state, except corporations
55 exempt under section five of this article, at the rate of eight
56 and one-half percent.

57 (6) In the case of taxable periods beginning on or after
58 the first day of January, two thousand twelve, a tax is hereby
59 imposed for each taxable year on the West Virginia taxable
60 income of every domestic or foreign corporation engaging in
61 business in this state or deriving income from property,
62 activity or other sources in this state, except corporations
63 exempt under section five of this article, at the rate of seven
64 and three-quarters percent: *Provided*, That the reduction in
65 tax authorized by this subsection shall be suspended if the
66 combined balance of funds as of the thirtieth day of June, two
67 thousand eleven, in the Revenue Fund Shortfall Reserve
68 Fund and the Revenue Fund Shortfall Reserve Fund - Part B
69 established in section twenty, article two, chapter eleven-b of
70 this code does not equal or exceed ten percent of the general
71 revenue fund budgeted for the fiscal year commencing the
72 first day of July, two thousand eleven: *Provided, however*,
73 That the rate reduction schedule will resume in the calendar
74 year immediately following any subsequent fiscal year when
75 the combined balance of funds as of the thirtieth day of June

76 of that fiscal year in the Revenue Fund Shortfall Reserve
77 Fund and the Revenue Fund Shortfall Reserve Fund - Part B
78 next equals or exceeds ten percent of the general revenue
79 fund budgeted for the immediately succeeding fiscal year.

80 (7) In the case of taxable periods beginning on or after
81 the first day of January, two thousand thirteen, a tax is hereby
82 imposed for each taxable year on the West Virginia taxable
83 income of every domestic or foreign corporation engaging in
84 business in this state or deriving income from property,
85 activity or other sources in this state, except corporations
86 exempt under section five of this article, at the rate of seven
87 percent: *Provided*, That the reduction in tax authorized by
88 this subsection shall be suspended for one calendar year
89 subsequent to the occurrence of the suspension of the
90 reduction in tax authorized by subdivision (6) of this section:
91 *Provided, however*, That the reduction in tax on the first day
92 of any calendar year authorized by this subsection shall be
93 suspended if the combined balance of funds as of the thirtieth
94 day of June of the preceding year in the Revenue Fund
95 Shortfall Reserve Fund and the Revenue Fund Shortfall
96 Reserve Fund - Part B established in section twenty, article
97 two, chapter eleven-b of this code does not equal or exceed
98 ten percent of the general revenue fund budgeted for the
99 fiscal year commencing the first day of July of the preceding
100 year.

101 (8) In the case of taxable periods beginning on or after
102 the first day of January, two thousand fourteen, a tax is
103 hereby imposed for each taxable year on the West Virginia
104 taxable income of every domestic or foreign corporation
105 engaging in business in this state or deriving income from
106 property, activity or other sources in this state, except
107 corporations exempt under section five of this article, at the
108 rate of six and one-half percent: *Provided*, That the reduction
109 in tax authorized by this subsection shall be suspended for
110 one calendar year subsequent to the occurrence of the

111 suspension of the reduction in tax authorized by subdivision
112 (7) of this section: *Provided, however,* That the reduction in
113 tax on the first day of any calendar year authorized by this
114 subsection shall be suspended if the combined balance of
115 funds as of the thirtieth day of June of the preceding year in
116 the Revenue Fund Shortfall Reserve Fund and the Revenue
117 Fund Shortfall Reserve Fund - Part B established in section
118 twenty, article two, chapter eleven-b of this code does not
119 equal or exceed ten percent of the general revenue fund
120 budgeted for the fiscal year commencing the first day of July
121 of the preceding year.

§11-24-7. Allocation and apportionment.

1 (a) *General.* -- Any taxpayer having income from
2 business activity which is taxable both in this state and in
3 another state shall allocate and apportion its net income as
4 provided in this section. For purposes of this section, the
5 term “net income” means the taxpayer’s federal taxable
6 income adjusted as provided in section six of this article.

7 (b) *“Taxable in another state” defined.* -- For purposes
8 of allocation and apportionment of net income under this
9 section, a taxpayer is taxable in another state if:

10 (1) In that state the taxpayer is subject to a net income
11 tax, a franchise tax measured by net income, a franchise tax
12 for the privilege of doing business or a corporation stock tax;
13 or

14 (2) That state has jurisdiction to subject the taxpayer to a
15 net income tax, regardless of whether, in fact, that state does
16 or does not subject the taxpayer to the tax.

17 (c) *Business activities entirely within West Virginia.* -- If
18 the business activities of a taxpayer take place entirely within
19 this state, the entire net income of the taxpayer is subject to

20 the tax imposed by this article. The business activities of a
21 taxpayer are considered to have taken place in their entirety
22 within this state if the taxpayer is not “taxable in another
23 state”: *Provided*, That for tax years beginning before the first
24 day of January, two thousand nine, the business activities of
25 a financial organization having its commercial domicile in
26 this state are considered to take place entirely in this state,
27 notwithstanding that the organization may be “taxable in
28 another state”: *Provided, however*, That for tax years
29 beginning on or after the first day of January, two thousand
30 nine, the income from the business activities of a financial
31 organization that are taxable in another state shall be
32 apportioned according to the applicable provisions of this
33 article.

34 (d) *Business activities partially within and partially*
35 *without West Virginia; allocation of nonbusiness income.* --
36 If the business activities of a taxpayer take place partially
37 within and partially without this state and the taxpayer is also
38 taxable in another state, rents and royalties from real or
39 tangible personal property, capital gains, interest, dividends
40 or patent or copyright royalties, to the extent that they
41 constitute nonbusiness income of the taxpayer, shall be
42 allocated as provided in subdivisions (1) through (4),
43 inclusive, of this subsection: *Provided*, That to the extent the
44 items constitute business income of the taxpayer, they may
45 not be so allocated but they shall be apportioned to this state
46 according to the provisions of subsection (e) of this section
47 and to the applicable provisions of section seven-b of this
48 article.

49 (1) *Net rents and royalties.* --

50 (A) Net rents and royalties from real property located in
51 this state are allocable to this state.

52 (B) Net rents and royalties from tangible personal
53 property are allocable to this state:

54 (i) If and to the extent that the property is utilized in this
55 state; or

56 (ii) In their entirety if the taxpayer's commercial domicile
57 is in this state and the taxpayer is not organized under the
58 laws of or taxable in the state in which the property is
59 utilized.

60 (C) The extent of utilization of tangible personal property
61 in a state is determined by multiplying the rents and royalties
62 by a fraction, the numerator of which is the number of days
63 of physical location of the property in the state during the
64 rental or royalty period in the taxable year and the
65 denominator of which is the number of days of physical
66 location of the property everywhere during all rental or
67 royalty periods in the taxable year. If the physical location of
68 the property during the rental or royalty period is unknown or
69 unascertainable by the taxpayer, tangible personal property
70 is utilized in the state in which the property was located at the
71 time the rental or royalty payer obtained possession.

72 (2) *Capital gains.* --

73 (A) Capital gains and losses from sales of real property
74 located in this state are allocable to this state.

75 (B) Capital gains and losses from sales of tangible
76 personal property are allocable to this state if:

77 (i) The property had a situs in this state at the time of the
78 sale; or

79 (ii) The taxpayer's commercial domicile is in this state
80 and the taxpayer is not taxable in the state in which the
81 property had a situs.

82 (C) Capital gains and losses from sales of intangible
83 personal property are allocable to this state if the taxpayer's
84 commercial domicile is in this state.

85 (D) Gains pursuant to Section 631 (a) and (b) of the
86 Internal Revenue Code of 1986, as amended, from sales of
87 natural resources severed in this state shall be allocated to
88 this state if they are nonbusiness income.

89 (3) Interest and dividends are allocable to this state if the
90 taxpayer's commercial domicile is in this state. --

91 (4) *Patent and copyright royalties.* --

92 (A) Patent and copyright royalties are allocable to this
93 state:

94 (i) If and to the extent that the patent or copyright is
95 utilized by the payer in this state; or

96 (ii) If and to the extent that the patent or copyright is
97 utilized by the payer in a state in which the taxpayer is not
98 taxable and the taxpayer's commercial domicile is in this
99 state.

100 (B) A patent is utilized in a state to the extent that it is
101 employed in production, fabrication, manufacturing or other
102 processing in the state or to the extent that a patented product
103 is produced in the state. If the basis of receipts from patent
104 royalties does not permit allocation to states or if the
105 accounting procedures do not reflect states of utilization, the
106 patent is utilized in the state in which the taxpayer's
107 commercial domicile is located.

108 (C) A copyright is utilized in a state to the extent that
109 printing or other publication originates in the state. If the
110 basis of receipts from copyright royalties does not permit

111 allocation to states or if the accounting procedures do not
112 reflect states of utilization, the copyright is utilized in the
113 state in which the taxpayer's commercial domicile is located.

114 (5) *Corporate partner's distributive share.* --

115 (A) Persons carrying on business as partners in a
116 partnership, as defined in Section 761 of the Internal Revenue
117 Code of 1986, as amended, are liable for income tax only in
118 their separate or individual capacities.

119 (B) A corporate partner's distributive share of income,
120 gain, loss, deduction or credit of a partnership shall be
121 modified as provided in section six of this article for each
122 partnership. For taxable years beginning on or after the
123 thirty-first day of December, one thousand nine hundred
124 ninety-eight, the distributive share shall then be allocated and
125 apportioned as provided in this section using the
126 partnership's property, payroll and sales factors. The sum of
127 that portion of the distributive share allocated and
128 apportioned to this state shall then be treated as distributive
129 share allocated to this state; and that portion of distributive
130 share allocated or apportioned outside this state shall be
131 treated as distributive share allocated outside this state, unless
132 the taxpayer requests or the Tax Commissioner, under
133 subsection (h) of this section requires that the distributive
134 share be treated differently.

135 (C) This subdivision shall be null and void and of no
136 force or effect for tax years beginning on or after the first day
137 of January, two thousand nine.

138 (e) *Business activities partially within and partially*
139 *without this state; apportionment of business income.* -- All
140 net income, after deducting those items specifically allocated
141 under subsection (d) of this section, shall be apportioned to
142 this state by multiplying the net income by a fraction, the

143 numerator of which is the property factor plus the payroll
144 factor plus two times the sales factor and the denominator of
145 which is four, reduced by the number of factors, if any,
146 having no denominator.

147 (1) *Property factor.* -- The property factor is a fraction,
148 the numerator of which is the average value of the taxpayer's
149 real and tangible personal property owned or rented and used
150 by it in this state during the taxable year and the denominator
151 of which is the average value of all the taxpayer's real and
152 tangible personal property owned or rented and used by the
153 taxpayer during the taxable year, which is reported on
154 Schedule L Federal Form 1120, plus the average value of all
155 real and tangible personal property leased and used by the
156 taxpayer during the taxable year.

157 (2) *Value of property.* -- Property owned by the taxpayer
158 shall be valued at its original cost, adjusted by subsequent
159 capital additions or improvements thereto and partial
160 disposition thereof, by reason of sale, exchange,
161 abandonment, etc.: *Provided*, That where records of original
162 cost are unavailable or cannot be obtained without
163 unreasonable expense, property shall be valued at original
164 cost as determined under rules of the Tax Commissioner.
165 Property rented by the taxpayer from others shall be valued
166 at eight times the annual rental rate. The term "net annual
167 rental rate" is the annual rental paid, directly or indirectly, by
168 the taxpayer, or for its benefit, in money or other
169 consideration for the use of property and includes:

170 (A) Any amount payable for the use of real or tangible
171 personal property, or any part of the property, whether
172 designated as a fixed sum of money or as a percentage of
173 sales, profits or otherwise.

174 (B) Any amount payable as additional rent or in lieu of
175 rents, such as interest, taxes, insurance, repairs or any other

176 items which are required to be paid by the terms of the lease
177 or other arrangement, not including amounts paid as service
178 charges, such as utilities, janitor services, etc. If a payment
179 includes rent and other charges unsegregated, the amount of
180 rent shall be determined by consideration of the relative
181 values of the rent and the other items.

182 (3) *Movable property.* -- The value of movable tangible
183 personal property used both within and without this state
184 shall be included in the numerator to the extent of its
185 utilization in this state. The extent of the utilization shall be
186 determined by multiplying the original cost of the property
187 by a fraction, the numerator of which is the number of days
188 of physical location of the property in this state during the
189 taxable period and the denominator of which is the number
190 of days of physical location of the property everywhere
191 during the taxable year. The number of days of physical
192 location of the property may be determined on a statistical
193 basis or by other reasonable method acceptable to the Tax
194 Commissioner.

195 (4) *Leasehold improvements.* -- Leasehold improvements
196 shall, for purposes of the property factor, be treated as
197 property owned by the taxpayer regardless of whether the
198 taxpayer is entitled to remove the improvements or the
199 improvements revert to the lessor upon expiration of the
200 lease. Leasehold improvements shall be included in the
201 property factor at their original cost.

202 (5) *Average value of property.* -- The average value of
203 property shall be determined by averaging the values at the
204 beginning and ending of the taxable year: *Provided*, That the
205 Tax Commissioner may require the averaging of monthly
206 values during the taxable year if substantial fluctuations in
207 the values of the property exist during the taxable year, or
208 where property is acquired after the beginning of the taxable
209 year, or is disposed of, or whose rental contract ceases,
210 before the end of the taxable year.

211 (6) *Payroll factor*. -- The payroll factor is a fraction, the
212 numerator of which is the total compensation paid in this
213 state during the taxable year by the taxpayer for
214 compensation and the denominator of which is the total
215 compensation paid by the taxpayer during the taxable year,
216 as shown on the taxpayer's federal income tax return as filed
217 with the Internal Revenue Service, as reflected in the
218 schedule of wages and salaries and that portion of cost of
219 goods sold which reflects compensation or as shown on a pro
220 forma return.

221 (7) *Compensation*. -- The term "compensation" means
222 wages, salaries, commissions and any other form of
223 remuneration paid to employees for personal services.
224 Payments made to an independent contractor or to any other
225 person not properly classifiable as an employee shall be
226 excluded. Only amounts paid directly to employees are
227 included in the payroll factor. Amounts considered as paid
228 directly to employees include the value of board, rent,
229 housing, lodging and other benefits or services furnished to
230 employees by the taxpayer in return for personal services,
231 provided the amounts constitute income to the recipient for
232 federal income tax purposes.

233 (8) *Employee*. -- The term "employee" means:

234 (A) Any officer of a corporation; or

235 (B) Any individual who, under the usual common-law
236 rule applicable in determining the employer-employee
237 relationship, has the status of an employee.

238 (9) *Compensation*. -- Compensation is paid or accrued in
239 this state if:

240 (A) The employee's service is performed entirely within
241 this state; or

242 (B) The employee's service is performed both within and
243 without this state, but the service performed without the state
244 is incidental to the individual's service within this state. The
245 word "incidental" means any service which is temporary or
246 transitory in nature or which is rendered in connection with
247 an isolated transaction; or

248 (C) Some of the service is performed in this state and:

249 (i) The employee's base of operations or, if there is no
250 base of operations, the place from which the service is
251 directed or controlled is in the state; or

252 (ii) The base of operations or the place from which the
253 service is directed or controlled is not in any state in which
254 some part of the service is performed, but the employee's
255 residence is in this state.

256 The term "base of operations" is the place of more or less
257 permanent nature from which the employee starts his or her
258 work and to which he or she customarily returns in order to
259 receive instructions from the taxpayer or communications
260 from his or her customers or other persons or to replenish
261 stock or other materials, repair equipment or perform any
262 other functions necessary to the exercise of his or her trade or
263 profession at some other point or points. The term "place
264 from which the service is directed or controlled" refers to the
265 place from which the power to direct or control is exercised
266 by the taxpayer.

267 (10) *Sales factor.* -- The sales factor is a fraction, the
268 numerator of which is the gross receipts of the taxpayer
269 derived from transactions and activity in the regular course
270 of its trade or business in this state during the taxable year
271 (business income), less returns and allowances. The
272 denominator of the fraction is the total gross receipts derived
273 by the taxpayer from transactions and activity in the regular

274 course of its trade or business during the taxable year
275 (business income) and reflected in its gross income reported
276 and as appearing on the taxpayer's Federal Form 1120 and
277 consisting of those certain pertinent portions of the (gross
278 income) elements set forth: *Provided*, That if either the
279 numerator or the denominator includes interest or dividends
280 from obligations of the United States government which are
281 exempt from taxation by this state, the amount of such
282 interest and dividends, if any, shall be subtracted from the
283 numerator or denominator in which it is included.

284 (11) *Allocation of sales of tangible personal property.* --

285 (A) Sales of tangible personal property are in this state if:

286 (i) The property is received in this state by the purchaser,
287 other than the United States government, regardless of the
288 f.o.b. point or other conditions of the sale. In the case of
289 delivery by common carrier or other means of transportation,
290 the place at which the property is ultimately received after all
291 transportation has been completed is the place at which the
292 property is received by the purchaser. Direct delivery in this
293 state, other than for purposes of transportation, to a person or
294 firm designated by the purchaser, is delivery to the purchaser
295 in this state and direct delivery outside this state to a person
296 or firm designated by the purchaser is not delivery to the
297 purchaser in this state, regardless of where title passes or
298 other conditions of sale; or

299 (ii) The property is shipped from an office, store,
300 warehouse, factory or other place of storage in this state and
301 the purchaser is the United States government.

302 (B) All other sales of tangible personal property delivered
303 or shipped to a purchaser within a state in which the taxpayer
304 is not taxed, as defined in subsection (b) of this section, shall
305 be excluded from the denominator of the sales factor.

306 (12) *Allocation of other sales.* -- Sales, other than sales
307 of tangible personal property, are in this state if:

308 (A) The income-producing activity is performed in this
309 state; or

310 (B) The income-producing activity is performed both in
311 and outside this state and a greater proportion of the income-
312 producing activity is performed in this state than in any other
313 state, based on costs of performance; or

314 (C) The sale constitutes business income to the taxpayer,
315 or the taxpayer is a financial organization not having its
316 commercial domicile in this state, and in either case the sale
317 is a receipt described as attributable to this state in subsection
318 (b), section seven-b of this article.

319 (13) *Financial organizations and other taxpayers with*
320 *business activities partially within and partially without this*
321 *state.* -- Notwithstanding anything contained in this section
322 to the contrary, in the case of financial organizations and
323 other taxpayers, not having their commercial domicile in this
324 state, the rules of this subsection apply to the apportionment
325 of income from their business activities except as expressly
326 otherwise provided in subsection (b), section seven-b of this
327 article.

328 (f) *Income-producing activity.* -- The term “income-
329 producing activity” applies to each separate item of income
330 and means the transactions and activity directly engaged in
331 by the taxpayer in the regular course of its trade or business
332 for the ultimate purpose of obtaining gain or profit. The
333 activity does not include transactions and activities
334 performed on behalf of the taxpayer, such as those conducted
335 on its behalf by an independent contractor. “Income-
336 producing activity” includes, but is not limited to, the
337 following:

338 (1) The rendering of personal services by employees with
339 utilization of tangible and intangible property by the taxpayer
340 in performing a service;

341 (2) The sale, rental, leasing, licensing or other use of real
342 property;

343 (3) The sale, rental, leasing, licensing or other use of
344 tangible personal property; or

345 (4) The sale, licensing or other use of intangible personal
346 property.

347 The mere holding of intangible personal property is not,
348 in itself, an income-producing activity: *Provided*, That the
349 conduct of the business of a financial organization is an
350 income-producing activity.

351 (g) *Cost of performance.* -- The term “cost of
352 performance” means direct costs determined in a manner
353 consistent with generally accepted accounting principles and
354 in accordance with accepted conditions or practices in the
355 trade or business of the taxpayer.

356 (h) *Other methods of allocation and apportionment.* --

357 (1) *General.* -- If the allocation and apportionment
358 provisions of subsections (d) and (e) of this section do not
359 fairly represent the extent of the taxpayer’s business activities
360 in this state, the taxpayer may petition for or the Tax
361 Commissioner may require, in respect to all or any part of the
362 taxpayer’s business activities, if reasonable:

363 (A) Separate accounting;

364 (B) The exclusion of one or more of the factors;

365 (C) The inclusion of one or more additional factors which
366 will fairly represent the taxpayer's business activity in this
367 state; or

368 (D) The employment of any other method to effectuate an
369 equitable allocation or apportionment of the taxpayer's
370 income. The petition shall be filed no later than the due date
371 of the annual return for the taxable year for which the
372 alternative method is requested, determined without regard to
373 any extension of time for filing the return and the petition
374 shall include a statement of the petitioner's objections and of
375 the alternative method of allocation or apportionment as it
376 believes to be proper under the circumstances with detail and
377 proof as the Tax Commissioner requires.

378 (2) *Alternative method for public utilities.* -- If the
379 taxpayer is a public utility and if the allocation and
380 apportionment provisions of subsections (d) and (e) of this
381 section do not fairly represent the taxpayer's business
382 activities in this state, the taxpayer may petition for, or the
383 Tax Commissioner may require, as an alternative to the other
384 methods provided in subdivision (1) of this subsection, the
385 allocation and apportionment of the taxpayer's net income in
386 accordance with any system of accounts prescribed by the
387 Public Service Commission of this state pursuant to the
388 provisions of section eight, article two, chapter twenty-four
389 of this code: *Provided*, That the allocation and apportionment
390 provisions of the system of accounts fairly represent the
391 extent of the taxpayer's business activities in this state for the
392 purposes of the tax imposed by this article.

393 (3) *Burden of proof.* -- In any proceeding before the Tax
394 Commissioner or in any court in which employment of one
395 of the methods of allocation or apportionment provided in
396 subdivision (1) or (2) of this subsection is sought, on the
397 grounds that the allocation and apportionment provisions of
398 subsections (d) and (e) of this section do not fairly represent

399 the extent of the taxpayer's business activities in this state,
400 the burden of proof is:

401 (A) If the Tax Commissioner seeks employment of one
402 of the methods, on the Tax Commissioner; or

403 (B) If the taxpayer seeks employment of one of the other
404 methods, on the taxpayer.

§11-24-7b. Special apportionment rules - financial organizations.

1 (a) *General.* -- The Legislature hereby finds that the
2 general formula set forth in section seven of this article for
3 apportioning the business income of corporations taxable in
4 this state as well as in another state is inappropriate for use by
5 financial organizations due to the particular characteristics of
6 those organizations and the manner in which their business
7 is conducted. Accordingly, the general formula set forth in
8 section seven of this article may not be used to apportion the
9 business income of financial organizations, which shall use
10 only the apportionment formula and methods set forth in this
11 section.

12 (b) *West Virginia financial organizations taxable in*
13 *another state.* -- The West Virginia taxable income of a
14 financial organization that has its commercial domicile in this
15 state and which is taxable in another state shall be the sum of:
16 (1) The nonbusiness income component of its adjusted
17 federal taxable income for the taxable year which is allocated
18 to this state as provided in subsection (d), section seven of
19 this article; plus (2) the business income component of its
20 adjusted federal taxable income for the taxable year which is
21 apportioned to this state as provided in this section.

22 (c) *Out-of-state financial organizations with business*
23 *activities in this state.* -- The West Virginia taxable income

24 of a financial organization that does not have its commercial
25 domicile in this state but which regularly engages in business
26 in this state shall be the sum of: (1) The nonbusiness income
27 component of its adjusted federal taxable income for the
28 taxable year which is allocated to this state as provided in
29 subsection (d), section seven of this article; plus (2) the
30 business income component of its adjusted federal taxable
31 income for the taxable year which is apportioned to this state
32 as provided in this section.

33 (d) *Engaging in business - nexus presumptions and*
34 *exclusions.* -- A financial organization that has its
35 commercial domicile in another state is presumed to be
36 regularly engaging in business in this state if during any year
37 it obtains or solicits business with twenty or more persons
38 within this state, or if the sum of the value of its gross
39 receipts attributable to sources in this state equals or exceeds
40 one hundred thousand dollars. However, gross receipts from
41 the following types of property, as well as those contacts with
42 this state reasonably and exclusively required to evaluate and
43 complete the acquisition or disposition of the property, the
44 servicing of the property or the income from it, the collection
45 of income from the property or the acquisition or liquidation
46 of collateral relating to the property shall not be a factor in
47 determining whether the owner is engaging in business in this
48 state:

49 (1) An interest in a real estate mortgage investment
50 conduit, a real estate investment trust or a regulated
51 investment company;

52 (2) An interest in a loan backed security representing
53 ownership or participation in a pool of promissory notes or
54 certificates of interest that provide for payments in relation to
55 payments or reasonable projections of payments on the notes
56 or certificates;

57 (3) An interest in a loan or other asset from which the
58 interest is attributed to a consumer loan, a commercial loan
59 or a secured commercial loan and in which the payment
60 obligations were solicited and entered into by a person that is
61 independent, and not acting on behalf, of the owner;

62 (4) An interest in the right to service or collect income
63 from a loan or other asset from which interest on the loan is
64 attributed as a loan described in the previous paragraph and
65 in which the payment obligations were solicited and entered
66 into by a person that is independent, and not acting on behalf,
67 of the owner; or

68 (5) Any amounts held in an escrow or trust account with
69 respect to property described above.

70 (e) *Definitions.* — For purposes of this section:

71 (1) "Commercial domicile" has same meaning as that
72 term is defined in section three-a of this article.

73 (2) "Deposit" means:

74 (A) The unpaid balance of money or its equivalent
75 received or held by a financial organization in the usual
76 course of business and for which it has given or it is
77 obligated to give credit, either conditionally or
78 unconditionally, to a commercial, checking, savings, time or
79 thrift account whether or not advance notice is required to
80 withdraw the credit funds, or which is evidenced by a
81 certificate of deposit, thrift certificate, investment certificate
82 or certificate of indebtedness, or other similar name, or a
83 check or draft drawn against a deposit account and certified
84 by the financial organization, or a letter of credit or a
85 traveler's check on which the financial organization is
86 primarily liable: *Provided*, That without limiting the
87 generality of the term "money or its equivalent", any account

88 or instrument must be regarded as evidencing the receipt of
89 the equivalent of money when credited or issued in exchange
90 for checks or drafts or for a promissory note upon which the
91 person obtaining any credit or instrument is primarily or
92 secondarily liable or for a charge against a deposit account or
93 in settlement of checks, drafts or other instruments forwarded
94 to the bank for collection;

95 (B) Trust funds received or held by the financial
96 organization, whether held in the trust department or held or
97 deposited in any other department of the financial
98 organization;

99 (C) Money received or held by a financial organization
100 or the credit given for money or its equivalent received or
101 held by a financial organization in the usual course of
102 business for a special or specific purpose, regardless of the
103 legal relationship thereby established, including, without
104 being limited to, escrow funds, funds held as security for an
105 obligation due the financial organization or other, including
106 funds held as dealers' reserves or for securities loaned by the
107 financial organization, funds deposited by a debtor to meet
108 maturing obligations, funds deposited as advance payment on
109 subscriptions to United States government securities, funds
110 held for distribution or purchase of securities, funds held to
111 meet its acceptances or letters of credit, and withheld taxes:
112 *Provided*, That there shall not be included funds which are
113 received by the financial organization for immediate
114 application to the reduction of an indebtedness to the
115 receiving financial organization, or under condition that the
116 receipt thereof immediately reduces or extinguishes an
117 indebtedness;

118 (D) Outstanding drafts, including advice or authorization
119 to charge a financial organization's balance in another
120 organization, cashier's checks, money orders or other officer's
121 checks issued in the usual course of business for any purpose,

122 but not including those issued in payment for services,
123 dividends or purchases or other costs or expenses of the
124 financial organization itself; and

125 (E) Money or its equivalent held as a credit balance by a
126 financial organization on behalf of its customer if the entity
127 is engaged in soliciting and holding balances in the regular
128 course of its business.

129 (3) "Financial organization" has the same meaning as that
130 term is defined in section three-a of this article.

131 (4) "Sales" means, for purposes of apportionment under
132 this section, the gross receipts of a financial organization
133 included in the gross receipts factor described in subsection
134 (g) of this section, regardless of their source.

135 (f) *Apportionment rules.* -- A financial organization
136 which regularly engages in business both within and without
137 this state shall apportion the business income component of
138 its federal taxable income, after adjustment as provided in
139 section six of this article, by multiplying the amount thereof
140 by the special gross receipts factor determined as provided in
141 subsection (g) of this section.

142 (g) *Special gross receipts factor.* -- The gross receipts
143 factor is a fraction, the numerator of which is the total gross
144 receipts of the taxpayer from sources within this state during
145 the taxable year and the denominator of which is the total
146 gross receipts of the taxpayer wherever earned during the
147 taxable year: *Provided*, That neither the numerator nor the
148 denominator of the gross receipts factor shall include receipts
149 from obligations described in paragraphs (A), (B), (C) and
150 (D), subdivision (1), subsection (f), section six of this article.

151 (1) *Numerator.* -- The numerator of the gross receipts
152 factor shall include, in addition to items otherwise includable

153 in the sales factor under section seven of this article, the
154 following:

155 (A) Receipts from the lease or rental of real or tangible
156 personal property whether as the economic equivalent of an
157 extension of credit or otherwise if the property is located in
158 this state;

159 (B) Interest income and other receipts from assets in the
160 nature of loans which are secured primarily by real estate or
161 tangible personal property if the security property is located
162 in the state. In the event that the security property is also
163 located in one or more other states, receipts shall be
164 presumed to be from sources within this state, subject to
165 rebuttal based upon factors described in rules to be proposed
166 by the Tax Commissioner, including the factor that the
167 proceeds of any loans were applied and used by the borrower
168 entirely outside of this state;

169 (C) Interest income and other receipts from consumer
170 loans which are unsecured or are secured by intangible
171 property that are made to residents of this state, whether at a
172 place of business, by traveling loan officer, by mail, by
173 telephone or other electronic means or otherwise;

174 (D) Interest income and other receipts from commercial
175 loans and installment obligations which are unsecured or are
176 secured by intangible property if and to the extent that the
177 borrower or debtor is a resident of or is domiciled in this
178 state: *Provided*, That receipts are presumed to be from
179 sources in this state and the presumption may be overcome
180 by reference to factors described in rules to be proposed by
181 the Tax Commissioner, including the factor that the proceeds
182 of any loans were applied and used by the borrower entirely
183 outside of this state;

184 (E) Interest income and other receipts from a financial
185 organization's syndication and participation in loans, under

186 the rules set forth in paragraphs (A) through (D), inclusive, of
187 this subdivision;

188 (F) Interest income and other receipts, including service
189 charges, from financial institution credit card and travel and
190 entertainment credit card receivables and credit card holders'
191 fees if the borrower or debtor is a resident of this state or if
192 the billings for any receipts are regularly sent to an address
193 in this state;

194 (G) Merchant discount income derived from financial
195 institution credit card holder transactions with a merchant
196 located in this state. In the case of merchants located within
197 and without this state, only receipts from merchant discounts
198 attributable to sales made from locations within this state
199 shall be attributed to this state. It shall be presumed, subject
200 to rebuttal, that the location of a merchant is the address
201 shown on the invoice submitted by the merchant to the
202 taxpayer;

203 (H) Gross receipts from the performance of services are
204 attributed to this state if:

205 (i) The service receipts are loan-related fees, including
206 loan servicing fees, and the borrower resides in this state,
207 except that, at the taxpayer's election, receipts from loan-
208 related fees which are either: (I) "Pooled" or aggregated for
209 collective financial accounting treatment; or (II) manually
210 written as nonrecurring extraordinary charges to be processed
211 directly to the general ledger may either be attributed to a
212 state based upon the borrowers' residences or upon the ratio
213 that total interest sourced to that state bears to total interest
214 from all sources;

215 (ii) The service receipts are deposit-related fees and the
216 depositor resides in this state, except that, at the taxpayer's
217 election, receipts from deposit-related fees which are either:

218 (I) "Pooled" or aggregated for collective financial accounting
219 treatment; or (II) manually written as nonrecurring
220 extraordinary charges to be processed directly to the general
221 ledger may either be attributed to a state based upon the
222 depositors' residences or upon the ratio that total deposits
223 sourced to that state bears to total deposits from all sources;

224 (iii) The service receipt is a brokerage fee and the account
225 holder is a resident of this state;

226 (iv) The service receipts are fees related to estate or trust
227 services and the estate's decedent was a resident of this state
228 immediately before death or the grantor who either funded or
229 established the trust is a resident of this state; or

230 (v) The service receipt is associated with the performance
231 of any other service not identified above and the service is
232 performed for an individual resident of, or for a corporation
233 or other business domiciled in, this state and the economic
234 benefit of service is received in this state;

235 (I) Gross receipts from the issuance of travelers' checks
236 and money orders if the checks and money orders are
237 purchased in this state; and

238 (J) All other receipts not attributed by this rule to a state
239 in which the taxpayer is taxable shall be attributed pursuant
240 to the laws of the state of the taxpayer's commercial domicile.

241 (2) *Denominator.* — The denominator of the gross
242 receipts factor shall include all of the taxpayer's gross
243 receipts from transactions of the kind included in the
244 numerator, but without regard to their source or situs.

245 (h) *Effective date.* — The provisions of this section
246 enacted as chapter one hundred sixty-seven, Acts of the
247 Legislature, one thousand nine hundred ninety-one, shall

248 apply to all taxable years beginning on or after the first day
249 of January, one thousand nine hundred ninety-one.
250 Amendments to this section enacted in the year one thousand
251 nine hundred ninety-six shall apply to taxable years
252 beginning after the thirty-first day of December, one
253 thousand nine hundred ninety-five. The amendments to this
254 section, enacted in the year two thousand eight, shall apply to
255 taxable years beginning after the thirty-first day of
256 December, two thousand eight.

§11-24-9b. Limited tax credits - Financial organizations.

1 (a) *Definitions.* --

2 For purposes of this section:

3 (1) “Adjusted base year tax liability” means the
4 taxpayer’s corporation net income tax liability under this
5 article, for the tax year ending immediately on or before the
6 thirty-first day of December, two thousand eight, before
7 application of any surtax, alternative minimum tax or credit
8 allowed, authorized or imposed under this chapter, adjusted
9 by:

10 (A) Adding the base year liabilities, if any, of affiliates,
11 subsidiaries and related entities that are included in the
12 taxpayer’s current year combined report, but which were not
13 included in the taxpayer’s base year filing configuration, and

14 (B) Subtracting the base year liabilities, if any, of
15 affiliates, subsidiaries and related entities that were included
16 in the taxpayer’s base year filing configuration, but that are
17 not included in the taxpayer’s current year combined report.

18 (2) “Adjusted primary tax liability” means the current
19 year’s liability of the taxpayer under this article before
20 application of any surtax, alternative minimum tax or credit

21 allowed, authorized or imposed under this chapter for the
22 current tax year:

23 (3) "Financial organization" means a financial
24 organization as defined in section three-a of this article.

25 (b) *Credit authorized.* -- A credit shall be allowed
26 against the adjusted primary tax liability of every financial
27 organization under this article, in an amount equal to a
28 portion of the increase in the adjusted primary tax liability of
29 the financial organization under this article for the taxable
30 year, over the amount of the adjusted primary tax liability of
31 the financial organization under this article for the taxable
32 year beginning immediately on or after the first day of
33 January, two thousand eight. The portion of the increase in
34 the adjusted primary tax liability under this article that shall
35 be allowed as a credit under this section is eighty percent for
36 taxable years beginning on and after the first day of January,
37 two thousand nine; sixty percent for taxable years beginning
38 on and after the first day of January, two thousand ten; forty
39 percent for taxable years beginning on and after the first day
40 of January, two thousand eleven; twenty percent for taxable
41 years beginning on and after the first day of January, two
42 thousand twelve; ten percent for taxable years beginning on
43 and after the first day of January, two thousand thirteen; and
44 zero percent for taxable years beginning on and after the first
45 day of January, two thousand fourteen; *Provided*, That the
46 credit allowed by this section may not be used to reduce the
47 adjusted primary tax liability of any financial organization
48 under this article in any taxable year below one million
49 dollars.

§11-24-13a. Method of filing for business taxes.

1 (a) *Privilege to file consolidated return.* --

2 (1) An affiliated group of corporations as defined for
3 purposes of filing a consolidated federal income tax return

4 shall, subject to the provisions of this section and in
5 accordance with any regulations prescribed by the Tax
6 Commissioner, have the privilege of filing a consolidated
7 return with respect to the tax imposed by this article for the
8 taxable year in lieu of filing separate returns. The making of
9 a consolidated return shall be upon the condition that all
10 corporations which at any time during the taxable year have
11 been members of the affiliated group are included in the
12 return and consent to the filing of the return. The filing of a
13 consolidated return is considered consent. When a
14 corporation is a member of an affiliated group for a fractional
15 part of the year, the consolidated return shall include the
16 income of the corporation for that part of the year during
17 which it is a member of the affiliated group.

18 (2) For tax years beginning on and after the first day of
19 January, two thousand nine, the provisions of this subsection
20 are null and void and of no further force or effect.

21 (b) *Election binding.* --

22 (1) If an affiliated group of corporations elects to file a
23 consolidated return under this article for any taxable year
24 ending after the thirtieth day of June, one thousand nine
25 hundred eighty-seven, the election once made shall not be
26 revoked for any subsequent taxable year without the written
27 approval of the Tax Commissioner consenting to the
28 revocation.

29 (2) For tax years beginning on and after the first day of
30 January, two thousand nine, the provisions of this subsection
31 are null and void and of no further force or effect.

32 (c) *Consolidated return - financial organizations.* --

33 An affiliated group that includes one or more financial
34 organizations may elect under this section to file a

35 consolidated return when that affiliated group complies with
36 all of the following rules:

37 (1) The affiliated group of which the financial
38 organization is a member must file a federal consolidated
39 income tax return for the taxable year.

40 (2) All members of the affiliated group included in the
41 federal consolidated return must consent to being included in
42 the consolidated return filed under this article. The filing of
43 a consolidated return under this article is conclusive proof of
44 consent.

45 (3) The West Virginia taxable income of the affiliated
46 group shall be the sum of:

47 (A) The pro forma West Virginia taxable income of all
48 financial organizations having their commercial domicile in
49 this state that are included in the federal consolidated return,
50 as shown on a combined pro forma West Virginia return
51 prepared for the financial organizations; plus

52 (B) The pro forma West Virginia taxable income of all
53 financial organizations not having their commercial domicile
54 in this state that are included in the federal consolidated
55 return, as shown on a combined pro forma West Virginia
56 return prepared for the financial organizations; plus

57 (C) The pro forma West Virginia taxable income of all
58 other members included in the federal consolidated income
59 tax return, as shown on a combined pro forma West Virginia
60 return prepared for all nonfinancial organization members,
61 except that income, income adjustments and exclusions,
62 apportionment factors and other items considered when
63 determining tax liability shall not be included in the pro
64 forma return prepared under this paragraph for a member that
65 is totally exempt from tax under section five of this article or

66 for a member that is subject to a different special industry
67 apportionment rule provided in this article. When a different
68 special industry apportionment rule applies, the West
69 Virginia taxable income of a member subject to that special
70 industry apportionment rule is determined on a separate pro
71 forma West Virginia return for the member subject to that
72 special industry rule and the West Virginia taxable income
73 determined shall be included in the consolidated return.

74 (4) The West Virginia consolidated return is prepared in
75 accordance with regulations of the Tax Commissioner
76 promulgated as provided in article three, chapter twenty-nine-
77 a of this code.

78 (5) The filing of a consolidated return does not distort
79 taxable income. In any proceeding, the burden of proof that
80 taxpayer's method of filing does not distort taxable income
81 shall be upon the taxpayer.

82 (6) For tax years beginning on and after the first day of
83 January, two thousand nine, the provisions of this subsection
84 are null and void and of no further force or effect.

85 (d) *Combined return.* --

86 (1) A combined return may be filed under this article by
87 a unitary group, including a unitary group that includes one
88 or more financial organizations, only pursuant to the prior
89 written approval of the Tax Commissioner. A request for
90 permission to file a combined return must be filed on or
91 before the statutory due date of the return, determined
92 without inclusion of any extension of time to file the return.
93 Permission to file a combined return may be granted by the
94 Tax Commissioner only when taxpayer submits evidence that
95 conclusively establishes that failure to allow the filing of a
96 combined return will result in an unconstitutional distortion
97 of taxable income. When permission to file a combined

98 return is granted, combined filing will be allowed for the tax
99 years stated in the Tax Commissioner's letter. The combined
100 return must be filed in accordance with regulations of the Tax
101 Commissioner promulgated in accordance with article three,
102 chapter twenty-nine-a of this code.

103 (2) For tax years beginning on and after the first day of
104 January, two thousand nine, the provisions of this subsection
105 are null and void and of no further force or effect.

106 (e) *Method of filing under this article deemed controlling*
107 *for purposes of other business taxes articles. --*

108 Notwithstanding the provisions of section nine-a, article
109 twenty-three of this chapter or any other provision of this
110 code to the contrary, the taxpayer shall file on the same basis
111 under article twenty-three of this chapter as the taxpayer files
112 under this article for the taxable year.

113 (f) *Regulations. --*

114 The Tax Commissioner shall prescribe regulations as he
115 or she considers necessary in order that the tax liability of
116 any affiliated group or combined group of corporations filing
117 a consolidated return, or of any unitary group of corporations
118 filing a combined return, and of each corporation in the
119 affiliated or unitary group, both during and after the period of
120 affiliation, may be returned, determined, computed, assessed,
121 collected and adjusted in a manner as the Tax Commissioner
122 considers necessary to clearly reflect the income tax liability
123 and the income factors necessary for the determination of
124 liability and in order to prevent avoidance of tax liability.

125 (g) *Computation and payment of tax. --*

126 In any case in which a consolidated or combined return
127 is filed, or required to be filed, the tax due under this article

128 from the affiliated, combined or unitary group shall be
129 determined, computed, assessed, collected and adjusted in
130 accordance with regulations prescribed by the Tax
131 Commissioner, in effect on the last day prescribed by section
132 thirteen of this article for the filing of the return, and such
133 affiliated, combined or unitary group, as the case may be,
134 shall be treated as the taxpayer. However, when any member
135 of an affiliated, combined or unitary group that files a
136 consolidated or combined return under this article is allowed
137 to claim credit against its tax liability under this article for
138 payment of any other tax, the amount of credit allowed may
139 not exceed that member's proportionate share of the
140 affiliated, combined or unitary group's precredit tax liability
141 under this article, as shown on its pro forma return.

142 (h) *Consolidated or combined return may be required.* --

143 The Tax Commissioner may require any person or
144 corporation to make and file a separate return or to make and
145 file a composite, unitary, consolidated or combined return, as
146 the case may be, in order to clearly reflect the taxable income
147 of such corporations.

148 (i) *Effective date.* --

149 The amendments to this section made by chapter one
150 hundred seventy-nine, Acts of the Legislature in the year one
151 thousand nine hundred ninety, shall apply to all taxable years
152 ending after the eighth day of March, one thousand nine
153 hundred ninety. Amendments to this article enacted by this
154 act in the year one thousand nine hundred ninety-six shall
155 apply to taxable years beginning on or after the first day of
156 January, one thousand nine hundred ninety-six, except that
157 financial organizations that are part of an affiliated group
158 may elect, after the effective date of this act, to file a
159 consolidated return prepared in accordance with the
160 provisions of this section, as amended, and subject to

161 applicable statutes of limitation, for taxable years beginning
162 on or after the first day of January, one thousand nine
163 hundred ninety-one, but before the first day of January, one
164 thousand nine hundred ninety-six, notwithstanding provisions
165 then in effect prohibiting out-of-state financial organizations
166 from filing consolidated returns for those years: *Provided,*
167 That when the statute of limitation on filing an amended
168 return for any of those years expires before the first day of
169 July, one thousand nine hundred ninety-six, the consolidated
170 return for that year, if filed, must be filed by said first day of
171 July.

172 (j) *Combined reporting required.* --

173 For tax years beginning on and after the first day of
174 January, two thousand nine, and notwithstanding the
175 provisions of section nine-a, article twenty-three of this
176 chapter or any other provision of this code to the contrary
177 except the last sentence of this subsection, any taxpayer
178 engaged in a unitary business with one or more other
179 corporations shall file a combined report which includes the
180 income, determined under section thirteen-c or thirteen-d of
181 this article, and the allocation and apportionment of income
182 provisions of this article, of all corporations that are members
183 of the unitary business, and other information as required by
184 the Tax Commissioner. Notwithstanding any provision to the
185 contrary in this article, the income of an insurance company,
186 the allocation or apportionment of income related thereto and
187 the apportionment factors of an insurance company shall not
188 be included in a combined report filed under this article
189 unless specifically required to be included by the Tax
190 Commissioner.

191 (k) *Combined reporting at Tax Commissioner's*
192 *discretion.* --

193 (1) The Tax Commissioner may require the combined
194 report to include the income and associated apportionment

195 factors of any persons that are not included pursuant to
196 subsection (j) of this section, but that are members of a
197 unitary business, in order to reflect proper apportionment of
198 income of the entire unitary businesses.

199 (2) If the Tax Commissioner determines that the reported
200 income or loss of a taxpayer engaged in a unitary business
201 with any person not included pursuant to subsection (j) of
202 this section represents an avoidance or evasion of tax by the
203 taxpayer, the Tax Commissioner may, on a case-by-case
204 basis, require all or any part of the income and associated
205 apportionment factors be included in the taxpayer's
206 combined report.

207 (3) With respect to inclusion of associated apportionment
208 factors pursuant to this section, the Tax Commissioner may
209 require the exclusion of any one or more of the factors, the
210 inclusion of one or more additional factors which will fairly
211 represent the taxpayer's business activity in this state, or the
212 employment of any other method to effectuate a proper
213 reflection of the total amount of income subject to
214 apportionment and an equitable allocation and apportionment
215 of the taxpayer's income.

**§11-24-13c. Determination of taxable income or loss using
combined report.**

1 (a) The use of a combined report does not disregard the
2 separate identities of the taxpayer members of the combined
3 group. Each taxpayer member is responsible for tax based on
4 its taxable income or loss apportioned or allocated to this
5 state, which shall include, in addition to other types of
6 income, the taxpayer member's apportioned share of business
7 income of the combined group, where business income of the
8 combined group is calculated as a summation of the
9 individual net business incomes of all members of the
10 combined group. A member's net business income is

11 determined by removing all but business income, expense
12 and loss from that member's total income, as provided in this
13 section and section thirteen-d of this article.

14 (b) *Components of income subject to tax in this state;*
15 *application of tax credits and post-apportionment deductions.*
16 --

17 (1) Each taxpayer member is responsible for tax based on
18 its taxable income or loss apportioned or allocated to this
19 state, which shall include:

20 (A) Its share of any business income apportionable to this
21 state of each of the combined groups of which it is a member,
22 determined under subsection (c) of this section;

23 (B) Its share of any business income apportionable to this
24 state of a distinct business activity conducted within and
25 without the state wholly by the taxpayer member, determined
26 under the provisions for apportionment of business income
27 set forth in this article;

28 (C) Its income from a business conducted wholly by the
29 taxpayer member entirely within the state;

30 (D) Its income sourced to this state from the sale or
31 exchange of capital or assets, and from involuntary
32 conversions, as determined under subsection (g), section
33 thirteen-d of this article;

34 (E) Its nonbusiness income or loss allocable to this state,
35 determined under the provisions for allocation of nonbusiness
36 income set forth in this article;

37 (F) Its income or loss allocated or apportioned in an
38 earlier year, required to be taken into account as state source
39 income during the income year, other than a net operating
40 loss; and

41 (G) Its net operating loss carryover. If the taxable
42 income computed pursuant to this section and section
43 thirteen-d of this article results in a loss for a taxpayer
44 member of the combined group, that taxpayer member has a
45 West Virginia net operating loss, subject to the net operating
46 loss limitations, and carryover provisions of this article. This
47 West Virginia net operating loss is applied as a deduction in
48 a prior or subsequent year only if that taxpayer has West
49 Virginia source positive net income, whether or not the
50 taxpayer is or was a member of a combined reporting group
51 in the prior or subsequent year: *Provided*, That net operating
52 loss carryovers that were earned during a tax year in which
53 the taxpayer filed a consolidated return under this article may
54 be applied as a deduction from the West Virginia taxable
55 income of any member of the taxpayer's controlled group
56 until the net operating loss carryover is used or expires
57 pursuant to the net operating loss provisions of this article.

58 (2) Except where otherwise provided, no tax credit or
59 post-apportionment deduction earned by one member of the
60 group, but not fully used by or allowed to that member, may
61 be used, in whole or in part, by another member of the group
62 or applied, in whole or in part, against the total income of the
63 combined group; and a post-apportionment deduction carried
64 over into a subsequent year as to the member that incurred it,
65 and available as a deduction to that member in a subsequent
66 year, will be considered in the computation of the income of
67 that member in the subsequent year regardless of the
68 composition of that income as apportioned, allocated or
69 wholly within this state: *Provided*, That unused and
70 unexpired economic development tax credits that were
71 earned during a tax year in which the taxpayer filed a
72 consolidated return under this article may, if otherwise
73 allowed within the statutory limitations applicable to the tax
74 credit, be used, in whole or in part, against taxes imposed by
75 this article on any member of the taxpayer's combined group
76 to the extent the credits would have been allowed had the

77 taxpayer continued to file a consolidated return. For
78 purposes of this section, the term “economic development tax
79 credit” means, and is limited to, a tax credit asserted on a tax
80 return under article thirteen-c, thirteen-d, thirteen-e,
81 thirteen-f, thirteen-g, thirteen-j, thirteen-q, thirteen-r or
82 thirteen-s of this chapter or under article one, chapter five-e
83 of this code.

84 (c) *Determination of taxpayer’s share of the business*
85 *income of a combined group apportionable to this state. --*

86 The taxpayer’s share of the business income
87 apportionable to this state of each combined group of which
88 it is a member shall be the product of:

89 (1) The business income of the combined group,
90 determined under section thirteen-d of this article; and

91 (2) The taxpayer member’s apportionment percentage,
92 determined in accordance with this article, including in the
93 property, payroll and sales factor numerators the taxpayer’s
94 property, payroll and sales, respectively, associated with the
95 combined group’s unitary business in this state and including
96 in the denominator the property, payroll and sales of all
97 members of the combined group, including the taxpayer,
98 which property, payroll and sales are associated with the
99 combined group’s unitary business wherever located.

100 The property, payroll and sales of a partnership shall be
101 included in the determination of the partner’s apportionment
102 percentage in proportion to a ratio the numerator of which is
103 the amount of the partner’s distributive share of partnership’s
104 unitary income included in the income of the combined group
105 in accordance with section thirteen-d of this article and the
106 denominator of which is the amount of the partnership’s total
107 unitary income.

§11-24-13d. Determination of the business income of the combined group.

1 The business income of a combined group is determined
2 as follows:

3 (a) From the total income of the combined group,
4 determined under subsection (b) of this section, subtract any
5 income and add any expense or loss, other than the business
6 income, expense or loss of the combined group.

7 (b) Except as otherwise provided, the total income of the
8 combined group is the sum of the income of each member of
9 the combined group determined under federal income tax
10 laws, as adjusted for state purposes, as if the member were
11 not consolidated for federal purposes. The income of each
12 member of the combined group shall be determined as
13 follows:

14 (1) For any member incorporated in the United States, or
15 included in a consolidated federal corporate income tax
16 return, the income to be included in the total income of the
17 combined group shall be the taxable income for the
18 corporation after making allowable adjustments under this
19 article.

20 (2) For any member not included in subdivision (1) of
21 this subsection, the income to be included in the total income
22 of the combined group shall be determined as follows:

23 (A) A profit and loss statement shall be prepared for each
24 foreign branch or corporation in the currency in which the
25 books of account of the branch or corporation are regularly
26 maintained.

27 (B) Adjustments shall be made to the profit and loss
28 statement to conform it to the accounting principles generally

29 accepted in the United States for the preparation of such
30 statements except as modified by this regulation.

31 (C) Adjustments shall be made to the profit and loss
32 statement to conform it to the tax accounting standards
33 required by this article.

34 (D) Except as otherwise provided by regulation, the profit
35 and loss statement of each member of the combined group,
36 and the apportionment factors related thereto, whether United
37 States or foreign, shall be translated into the currency in
38 which the parent company maintains its books and records.

39 (E) Income apportioned to this state shall be expressed in
40 United States dollars.

41 (3) In lieu of the procedures set forth in subdivision (2)
42 of this subsection, and subject to the determination of the Tax
43 Commissioner that it reasonably approximates income as
44 determined under this article, any member not included in
45 subdivision (1) of this subsection may determine its income
46 on the basis of the consolidated profit and loss statement
47 which includes the member and which is prepared for filing
48 with the Securities and Exchange Commission by related
49 corporations. If the member is not required to file with the
50 Securities and Exchange Commission, the Tax Commissioner
51 may allow the use of the consolidated profit and loss
52 statement prepared for reporting to shareholders and subject
53 to review by an independent auditor. If above statements do
54 not reasonably approximate income as determined under this
55 article, the Tax Commissioner may accept those statements
56 with appropriate adjustments to approximate that income.

57 (c) If a unitary business includes income from a
58 partnership, the income to be included in the total income of
59 the combined group shall be the member of the combined

60 group's direct and indirect distributive share of the
61 partnership's unitary business income.

62 (d) All dividends paid by one to another of the members
63 of the combined group shall, to the extent those dividends are
64 paid out of the earnings and profits of the unitary business
65 included in the combined report, in the current or an earlier
66 year, be eliminated from the income of the recipient. Except
67 as otherwise provided, this provision shall not apply to
68 dividends received from members of the unitary business
69 which are not a part of the combined group. Except when
70 specifically required by the Tax Commissioner to be
71 included, all dividends paid by an insurance company
72 directly or indirectly to a corporation that is part of a unitary
73 business with the insurance company shall be deducted or
74 eliminated from the income of the recipient of the dividend.

75 (e) Except as otherwise provided by regulation, business
76 income from an intercompany transaction between members
77 of the same combined group shall be deferred in a manner
78 similar to 26 C. F. R. 1.1502-13. Upon the occurrence of
79 any of the following events, deferred business income
80 resulting from an intercompany transaction between members
81 of a combined group shall be restored to the income of the
82 seller and shall be apportioned as business income earned
83 immediately before the event:

84 (1) The object of a deferred intercompany transaction is:

85 (A) Resold by the buyer to an entity that is not a member
86 of the combined group;

87 (B) Resold by the buyer to an entity that is a member of
88 the combined group for use outside the unitary business in
89 which the buyer and seller are engaged; or

90 (C) Converted by the buyer to a use outside the unitary
91 business in which the buyer and seller are engaged; or

92 (2) The buyer and seller are no longer members of the
93 same combined group, regardless of whether the members
94 remain unitary.

95 (f) A charitable expense incurred by a member of a
96 combined group shall, to the extent allowable as a deduction
97 pursuant to Internal Revenue Code Section 170, be subtracted
98 first from the business income of the combined group,
99 subject to the income limitations of that section applied to the
100 entire business income of the group and any remaining
101 amount shall then be treated as a nonbusiness expense
102 allocable to the member that incurred the expense, subject to
103 the income limitations of that section applied to the
104 nonbusiness income of that specific member. Any charitable
105 deduction disallowed under the foregoing rule, but allowed
106 as a carryover deduction in a subsequent year, shall be treated
107 as originally incurred in the subsequent year by the same
108 member and the rules of this section shall apply in the
109 subsequent year in determining the allowable deduction in
110 that year.

111 (g) Gain or loss from the sale or exchange of capital
112 assets, property described by Internal Revenue Code Section
113 1231(a)(3) and property subject to an involuntary conversion
114 shall be removed from the total separate net income of each
115 member of a combined group and shall be apportioned and
116 allocated as follows:

117 (1) For each class of gain or loss (short term capital, long
118 term capital, Internal Revenue Code Section 1231 and
119 involuntary conversions) all members' business gain and loss
120 for the class shall be combined without netting between
121 classes and each class of net business gain or loss separately
122 apportioned to each member using the member's

123 apportionment percentage determined under subsection (c),
124 section thirteen-c of this article.

125 (2) Each taxpayer member shall then net its apportioned
126 business gain or loss for all classes, including any such
127 apportioned business gain and loss from other combined
128 groups, against the taxpayer member's nonbusiness gain and
129 loss for all classes allocated to this state, using the rules of
130 Internal Revenue Code Sections 1222 and 1231, without
131 regard to any of the taxpayer member's gains or losses from
132 the sale or exchange of capital assets, Section 1231 property
133 and involuntary conversions which are nonbusiness items
134 allocated to another state.

135 (3) Any resulting state source income or loss, if the loss
136 is not subject to the limitations of Internal Revenue Code
137 Section 1211 of a taxpayer member produced by the
138 application of the preceding subsections shall then be applied
139 to all other state source income or loss of that member.

140 (4) Any resulting state source loss of a member that is
141 subject to the limitations of Section 1211 shall be carried
142 over by that member and shall be treated as state source
143 short-term capital loss incurred by that member for the year
144 for which the carryover applies.

145 (h) Any expense of one member of the unitary group
146 which is directly or indirectly attributable to the nonbusiness
147 or exempt income of another member of the unitary group
148 shall be allocated to that other member as corresponding
149 nonbusiness or exempt expense, as appropriate.

§11-24-13f. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.

1 (a) *Water's-edge reporting.* --

2 Absent an election under subsection (b) of this section to
3 report based upon a worldwide unitary combined reporting
4 basis, taxpayer members of a unitary group shall determine
5 each of their apportioned shares of the net business income
6 or loss of the combined group on a water's-edge unitary
7 combined reporting basis. In determining tax under this
8 article and article twenty-three of this chapter on a water's-
9 edge unitary combined reporting basis, taxpayer members
10 shall take into account all or a portion of the income and
11 apportionment factors of only the following members
12 otherwise included in the combined group pursuant to section
13 thirteen-a of this article:

14 (1) The entire income and apportionment factors of any
15 member incorporated in the United States or formed under
16 the laws of any state, the District of Columbia or any territory
17 or possession of the United States;

18 (2) The entire income and apportionment factors of any
19 member, regardless of the place incorporated or formed, if
20 the average of its property, payroll and sales factors within
21 the United States is twenty percent or more;

22 (3) The entire income and apportionment factors of any
23 member which is a domestic international sales corporation
24 as described in Internal Revenue Code Sections 991 to 994,
25 inclusive; a foreign sales corporation as described in Internal
26 Revenue Code Sections 921 to 927, inclusive; or any member
27 which is an export trade corporation, as described in Internal
28 Revenue Code Sections 970 to 971, inclusive;

29 (4) Any member not described in subdivision (1), (2) or
30 (3) of this subsection shall include its business income which
31 is effectively connected, or treated as effectively connected
32 under the provisions of the Internal Revenue Code, with the

33 conduct of a trade or business within the United States and,
34 for that reason, subject to federal income tax;

35 (5) Any member that is a “controlled foreign
36 corporation”, as defined in Internal Revenue Code Section
37 957, to the extent of the income of that member that is
38 defined in Section 952 of Subpart F of the Internal Revenue
39 Code (Subpart F income) not excluding lower-tier
40 subsidiaries’ distributions of such income which were
41 previously taxed, determined without regard to federal
42 treaties, and the apportionment factors related to that income;
43 any item of income received by a controlled foreign
44 corporation shall be excluded if such income was subject to
45 an effective rate of income tax imposed by a foreign country
46 greater than ninety percent of the maximum rate of tax
47 specified in Internal Revenue Code Section 11;

48 (6) Any member that earns more than twenty percent of
49 its income, directly or indirectly, from intangible property or
50 service-related activities that are deductible against the
51 business income of other members of the water's-edge group,
52 to the extent of that income and the apportionment factors
53 related thereto; and

54 (7) The entire income and apportionment factors of any
55 member that is doing business in a tax haven defined as being
56 engaged in activity sufficient for that tax haven jurisdiction
57 to impose a tax under United States constitutional standards.
58 If the member’s business activity within a tax haven is
59 entirely outside the scope of the laws, provisions and
60 practices that cause the jurisdiction to meet the criteria set
61 forth in the definition of a tax haven, the activity of the
62 member shall be treated as not having been conducted in a
63 tax haven.

64 (b) *Initiation and withdrawal of election to report based*
65 *on worldwide unitary combined reporting. --*

66 (1) An election to report West Virginia tax based on
67 worldwide unitary combined reporting is effective only if
68 made on a timely filed, original return for a tax year by every
69 member of the unitary business subject to tax under this
70 article. The Tax Commissioner shall develop rules and
71 regulations governing the impact, if any, on the scope or
72 application of a worldwide unitary combined reporting
73 election, including termination or deemed election, resulting
74 from a change in the composition of the unitary group, the
75 combined group, the taxpayer members and any other similar
76 change.

77 (2) The election shall constitute consent to the reasonable
78 production of documents and taking of depositions in
79 accordance with the provisions of this code.

80 (3) In the discretion of the Tax Commissioner, a
81 worldwide unitary combined reporting election may be
82 disregarded, in part or in whole, and the income and
83 apportionment factors of any member of the taxpayer's
84 unitary group may be included in or excluded from the
85 combined report without regard to the provisions of this
86 section, if any member of the unitary group fails to comply
87 with any provision of this article.

88 (4) In the discretion of the Tax Commissioner, the Tax
89 Commissioner may mandate worldwide unitary combined
90 reporting, in part or in whole, and the income and
91 apportionment factors of any member of the taxpayer's
92 unitary group may be included in or excluded from the
93 combined report without regard to the provisions of this
94 section, if any member of the unitary group fails to comply
95 with any provision of this article or if a person otherwise not
96 included in the water's-edge combined group was availed of
97 with a substantial objective of avoiding state income tax.

98 (5) A worldwide unitary combined reporting election is
99 binding for and applicable to the tax year it is made and all

100 tax years thereafter for a period of ten years. It may be
101 withdrawn or reinstated after withdrawal, prior to the
102 expiration of the ten-year period, only upon written request
103 for reasonable cause based on extraordinary hardship due to
104 unforeseen changes in state tax statutes, law or policy and
105 only with the written permission of the Tax Commissioner.
106 If the Tax Commissioner grants a withdrawal of election, he
107 or she shall impose reasonable conditions necessary to
108 prevent the evasion of tax or to clearly reflect income for the
109 election period prior to or after the withdrawal. Upon the
110 expiration of the ten-year period, a taxpayer may withdraw
111 from the worldwide unitary combined reporting election.
112 Withdrawal must be made in writing within one year of the
113 expiration of the election and is binding for a period of ten
114 years, subject to the same conditions as applied to the
115 original election. If no withdrawal is properly made, the
116 worldwide unitary combined reporting election shall be in
117 place for an additional ten-year period, subject to the same
118 conditions as applied to the original election.

119 (c) For purposes of determining the tax imposed by
120 article twenty-three of this chapter, the term “income”, as
121 used in this section, shall be interpreted to mean the tax base
122 or capital, as applicable, for purposes of the tax imposed
123 under article twenty-three of this chapter.

§11-24-42. Effective date.

1 The provisions of this article as amended or added by this
2 act enacted in the year two thousand eight shall apply to all
3 taxable years beginning after the thirty-first day of
4 December, two thousand eight: *Provided*, That if an effective
5 date is expressly provided in any provision, that specific
6 effective date shall control in lieu of this general effective
7 date provision.

CHAPTER 216

**(Com. Sub. for S.B. 552 - By Senators Helmick, Plymale
and Edgell)**

[Passed March 5, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2 and §24-6-6b of said code, all relating to taxation of prepaid wireless calling service and the wireless enhanced 911 fee; defining “prepaid wireless calling service”; providing that prepaid wireless calling service is subject to the consumers sales and service tax; requiring the collection and deposit by the Tax Commissioner of the proceeds of the consumers sales and service tax imposed on the sale of prepaid wireless calling service into the wireless enhanced 911 fee accounts maintained and administered by the Public Service Commission; and providing that prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.

Be it enacted by the Legislature of West Virginia:

That §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2 and §24-6-6b of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

24. Public Service Commission.

CHAPTER 11. TAXATION.**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

§11-15-2. Definitions.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

§11-15-2. Definitions.

1 (a) *General.* -- When used in this article and article
2 fifteen-a of this chapter, words defined in subsection (b) of
3 this section have the meanings ascribed to them in this
4 section, except in those instances where a different meaning
5 is provided in this article or the context in which the word is
6 used clearly indicates that a different meaning is intended by
7 the Legislature.

8 (b) *Definitions.* --

9 (1) "Business" includes all activities engaged in or caused
10 to be engaged in with the object of gain or economic benefit,
11 direct or indirect, and all activities of the state and its political
12 subdivisions which involve sales of tangible personal
13 property or the rendering of services when those service
14 activities compete with or may compete with the activities of
15 other persons.

16 (2) "Communication" means all telephone, radio, light,
17 light wave, radio telephone, telegraph and other
18 communication or means of communication, whether used
19 for voice communication, computer data transmission or
20 other encoded symbolic information transfers and includes
21 commercial broadcast radio, commercial broadcast television
22 and cable television.

23 (3) "Contracting":

24 (A) *In general.* -- "Contracting" means and includes the
25 furnishing of work, or both materials and work, for another

26 (by a sole contractor, general contractor, prime contractor,
27 subcontractor or construction manager) in fulfillment of a
28 contract for the construction, alteration, repair, decoration or
29 improvement of a new or existing building or structure, or
30 any part thereof, or for removal or demolition of a building
31 or structure, or any part thereof, or for the alteration,
32 improvement or development of real property. Contracting
33 also includes services provided by a construction manager so
34 long as the project for which the construction manager
35 provides the services results in a capital improvement to a
36 building or structure or to real property.

37 (B) *Form of contract not controlling.* -- An activity that
38 falls within the scope of the definition of contracting
39 constitutes contracting regardless of whether the contract
40 governing the activity is written or verbal and regardless of
41 whether it is in substance or form a lump sum contract, a
42 cost-plus contract, a time and materials contract, whether or
43 not open-ended, or any other kind of construction contract.

44 (C) *Special rules.* -- For purposes of this definition:

45 (i) The term “structure” includes, but is not limited to,
46 everything built up or composed of parts joined together in
47 some definite manner and attached or affixed to real property
48 or which adds utility to real property or any part thereof or
49 which adds utility to a particular parcel of property and is
50 intended to remain there for an indefinite period of time;

51 (ii) The term “alteration” means, and is limited to,
52 alterations which are capital improvements to a building or
53 structure or to real property;

54 (iii) The term “repair” means, and is limited to, repairs
55 which are capital improvements to a building or structure or
56 to real property;

57 (iv) The term “decoration” means, and is limited to,
58 decorations which are capital improvements to a building or
59 structure or to real property;

60 (v) The term “improvement” means, and is limited to,
61 improvements which are capital improvements to a building
62 or structure or to real property;

63 (vi) The term “capital improvement” means
64 improvements that are affixed to or attached to and become
65 a part of a building or structure or the real property or which
66 add utility to real property, or any part thereof, and that last
67 or are intended to be relatively permanent. As used herein,
68 “relatively permanent” means lasting at least a year in
69 duration without the necessity for regularly scheduled
70 recurring service to maintain the capital improvement.
71 “Regular recurring service” means regularly scheduled
72 service intervals of less than one year;

73 (vii) Contracting does not include the furnishing of work,
74 or both materials and work, in the nature of hookup,
75 connection, installation or other services if the service is
76 incidental to the retail sale of tangible personal property from
77 the service provider's inventory: *Provided*, That the hookup,
78 connection or installation of the foregoing is incidental to the
79 sale of the same and performed by the seller thereof or
80 performed in accordance with arrangements made by the
81 seller thereof. Examples of transactions that are excluded
82 from the definition of contracting pursuant to this subdivision
83 include, but are not limited to, the sale of wall-to-wall
84 carpeting and the installation of wall-to-wall carpeting, the
85 sale, hookup and connection of mobile homes, window air
86 conditioning units, dishwashers, clothing washing machines
87 or dryers, other household appliances, drapery rods, window
88 shades, venetian blinds, canvas awnings, free-standing
89 industrial or commercial equipment and other similar items
90 of tangible personal property. Repairs made to the foregoing

91 are within the definition of contracting if the repairs involve
92 permanently affixing to or improving real property or
93 something attached thereto which extends the life of the real
94 property or something affixed thereto or allows or intends to
95 allow the real property or thing permanently attached thereto
96 to remain in service for a year or longer; and

97 (viii) The term “construction manager” means a person
98 who enters into an agreement to employ, direct, coordinate or
99 manage design professionals and contractors who are hired
100 and paid directly by the owner or the construction manager.
101 The business activities of a “construction manager” as
102 defined in this subdivision constitute contracting, so long as
103 the project for which the construction manager provides the
104 services results in a capital improvement to a building or
105 structure or to real property.

106 (4) “Directly used or consumed” in the activities of
107 manufacturing, transportation, transmission, communication
108 or the production of natural resources means used or
109 consumed in those activities or operations which constitute
110 an integral and essential part of the activities, as contrasted
111 with and distinguished from those activities or operations
112 which are simply incidental, convenient or remote to the
113 activities.

114 (A) Uses of property or consumption of services which
115 constitute direct use or consumption in the activities of
116 manufacturing, transportation, transmission, communication
117 or the production of natural resources include only:

118 (i) In the case of tangible personal property, physical
119 incorporation of property into a finished product resulting
120 from manufacturing production or the production of natural
121 resources;

122 (ii) Causing a direct physical, chemical or other change
123 upon property undergoing manufacturing production or
124 production of natural resources;

125 (iii) Transporting or storing property undergoing
126 transportation, communication, transmission, manufacturing
127 production or production of natural resources;

128 (iv) Measuring or verifying a change in property directly
129 used in transportation, communication, transmission,
130 manufacturing production or production of natural resources;

131 (v) Physically controlling or directing the physical
132 movement or operation of property directly used in
133 transportation, communication, transmission, manufacturing
134 production or production of natural resources;

135 (vi) Directly and physically recording the flow of
136 property undergoing transportation, communication,
137 transmission, manufacturing production or production of
138 natural resources;

139 (vii) Producing energy for property directly used in
140 transportation, communication, transmission, manufacturing
141 production or production of natural resources;

142 (viii) Facilitating the transmission of gas, water, steam or
143 electricity from the point of their diversion to property
144 directly used in transportation, communication, transmission,
145 manufacturing production or production of natural resources;

146 (ix) Controlling or otherwise regulating atmospheric
147 conditions required for transportation, communication,
148 transmission, manufacturing production or production of
149 natural resources;

150 (x) Serving as an operating supply for property
151 undergoing transmission, manufacturing production or

152 production of natural resources, or for property directly used
153 in transportation, communication, transmission,
154 manufacturing production or production of natural resources;

155 (xi) Maintaining or repairing of property, including
156 maintenance equipment, directly used in transportation,
157 communication, transmission, manufacturing production or
158 production of natural resources;

159 (xii) Storing, removal or transportation of economic
160 waste resulting from the activities of manufacturing,
161 transportation, communication, transmission or the
162 production of natural resources;

163 (xiii) Engaging in pollution control or environmental
164 quality or protection activity directly relating to the activities
165 of manufacturing, transportation, communication,
166 transmission or the production of natural resources and
167 personnel, plant, product or community safety or security
168 activity directly relating to the activities of manufacturing,
169 transportation, communication, transmission or the
170 production of natural resources; or

171 (xiv) Otherwise using as an integral and essential part of
172 transportation, communication, transmission, manufacturing
173 production or production of natural resources.

174 (B) Uses of property or services which do not constitute
175 direct use or consumption in the activities of manufacturing,
176 transportation, transmission, communication or the
177 production of natural resources include, but are not limited
178 to:

179 (i) Heating and illumination of office buildings;

180 (ii) Janitorial or general cleaning activities;

181 (iii) Personal comfort of personnel;

182 (iv) Production planning, scheduling of work or
183 inventory control;

184 (v) Marketing, general management, supervision, finance,
185 training, accounting and administration; or

186 (vi) An activity or function incidental or convenient to
187 transportation, communication, transmission, manufacturing
188 production or production of natural resources, rather than an
189 integral and essential part of these activities.

190 (5) "Directly used or consumed" in the activities of gas
191 storage, the generation or production or sale of electric
192 power, the provision of a public utility service or the
193 operation of a utility business means used or consumed in
194 those activities or operations which constitute an integral and
195 essential part of those activities or operation, as contrasted
196 with and distinguished from activities or operations which are
197 simply incidental, convenient or remote to those activities.

198 (A) Uses of property or consumption of services which
199 constitute direct use or consumption in the activities of gas
200 storage, the generation or production or sale of electric
201 power, the provision of a public utility service or the
202 operation of a utility business include only:

203 (i) Tangible personal property, custom software or
204 services, including equipment, machinery, apparatus,
205 supplies, fuel and power and appliances, which are used
206 immediately in production or generation activities and
207 equipment, machinery, supplies, tools and repair parts used
208 to keep in operation exempt production or generation
209 devices. For purposes of this subsection, production or
210 generation activities shall commence from the intake, receipt
211 or storage of raw materials at the production plant site;

212 (ii) Tangible personal property, custom software or
213 services, including equipment, machinery, apparatus,

214 supplies, fuel and power, appliances, pipes, wires and mains,
215 which are used immediately in the transmission or
216 distribution of gas, water and electricity to the public, and
217 equipment, machinery, tools, repair parts and supplies used
218 to keep in operation exempt transmission or distribution
219 devices, and these vehicles and their equipment as are
220 specifically designed and equipped for those purposes are
221 exempt from the tax when used to keep a transmission or
222 distribution system in operation or repair. For purposes of
223 this subsection, transmission or distribution activities shall
224 commence from the close of production at a production plant
225 or wellhead when a product is ready for transmission or
226 distribution to the public and shall conclude at the point
227 where the product is received by the public;

228 (iii) Tangible personal property, custom software or
229 services, including equipment, machinery, apparatus,
230 supplies, fuel and power, appliances, pipes, wires and mains,
231 which are used immediately in the storage of gas or water,
232 and equipment, machinery, tools, supplies and repair parts
233 used to keep in operation exempt storage devices;

234 (iv) Tangible personal property, custom software or
235 services used immediately in the storage, removal or
236 transportation of economic waste resulting from the activities
237 of gas storage, the generation or production or sale of electric
238 power, the provision of a public utility service or the
239 operation of a utility business;

240 (v) Tangible personal property, custom software or
241 services used immediately in pollution control or
242 environmental quality or protection activity or community
243 safety or security directly relating to the activities of gas
244 storage, generation or production or sale of electric power,
245 the provision of a public utility service or the operation of a
246 utility business.

247 (B) Uses of property or services which would not
248 constitute direct use or consumption in the activities of gas
249 storage, generation or production or sale of electric power,
250 the provision of a public utility service or the operation of a
251 utility business include, but are not limited to:

252 (i) Heating and illumination of office buildings;

253 (ii) Janitorial or general cleaning activities;

254 (iii) Personal comfort of personnel;

255 (iv) Production planning, scheduling of work or
256 inventory control;

257 (v) Marketing, general management, supervision, finance,
258 training, accounting and administration; or

259 (vi) An activity or function incidental or convenient to
260 the activities of gas storage, generation or production or sale
261 of electric power, the provision of public utility service or the
262 operation of a utility business.

263 (6) "Gas storage" means the injection of gas into a
264 storage reservoir or the storage of gas for any period of time
265 in a storage reservoir or the withdrawal of gas from a storage
266 reservoir engaged in by businesses subject to the business
267 and occupation tax imposed by sections two and two-e,
268 article thirteen of this chapter.

269 (7) "Generating or producing or selling of electric power"
270 means the generation, production or sale of electric power
271 engaged in by businesses subject to the business and
272 occupation tax imposed by section two, two-d, two-m or
273 two-n, article thirteen of this chapter.

274 (8) "Gross proceeds" means the amount received in
275 money, credits, property or other consideration from sales

276 and services within this state, without deduction on account
277 of the cost of property sold, amounts paid for interest or
278 discounts or other expenses whatsoever. Losses may not be
279 deducted, but any credit or refund made for goods returned
280 may be deducted.

281 (9) “Includes” and “including”, when used in a definition
282 contained in this article, does not exclude other things
283 otherwise within the meaning of the term being defined.

284 (10) “Manufacturing” means a systematic operation or
285 integrated series of systematic operations engaged in as a
286 business or segment of a business which transforms or
287 converts tangible personal property by physical, chemical or
288 other means into a different form, composition or character
289 from that in which it originally existed.

290 (11) “Person” means any individual, partnership,
291 association, corporation, limited liability company, limited
292 liability partnership or any other legal entity, including this
293 state or its political subdivisions or an agency of either, or the
294 guardian, trustee, committee, executor or administrator of any
295 person.

296 (12) “Personal service” includes those: (A) Compensated
297 by the payment of wages in the ordinary course of
298 employment; and (B) rendered to the person of an individual
299 without, at the same time, selling tangible personal property,
300 such as nursing, barbering, shoe shining, manicuring and
301 similar services.

302 (13) “Prepaid wireless calling service” means a
303 telecommunications service that provides the right to utilize
304 mobile wireless service as well as other
305 nontelecommunications services, including the download of
306 digital products delivered electronically, content and
307 ancillary services, which must be paid for in advance that is

308 sold in predetermined units or dollars of which the number
309 decline with use in a known amount.

310 (14) Production of natural resources.

311 (A) “Production of natural resources” means, except for
312 oil and gas, the performance, by either the owner of the
313 natural resources or another, of the act or process of
314 exploring, developing, severing, extracting, reducing to
315 possession and loading for shipment and shipment for sale,
316 profit or commercial use of any natural resource products and
317 any reclamation, waste disposal or environmental activities
318 associated therewith and the construction, installation or
319 fabrication of ventilation structures, mine shafts, slopes,
320 boreholes, dewatering structures, including associated
321 facilities and apparatus, by the producer or others, including
322 contractors and subcontractors, at a coal mine or coal
323 production facility.

324 (B) For the natural resources oil and gas, “production of
325 natural resources” means the performance, by either the
326 owner of the natural resources, a contractor or a
327 subcontractor, of the act or process of exploring, developing,
328 drilling, well-stimulation activities such as logging,
329 perforating or fracturing, well-completion activities such as
330 the installation of the casing, tubing and other machinery and
331 equipment and any reclamation, waste disposal or
332 environmental activities associated therewith, including the
333 installation of the gathering system or other pipeline to
334 transport the oil and gas produced or environmental activities
335 associated therewith and any service work performed on the
336 well or well site after production of the well has initially
337 commenced.

338 (C) All work performed to install or maintain facilities up
339 to the point of sale for severance tax purposes is included in
340 the “production of natural resources” and subject to the direct
341 use concept.

342 (D) “Production of natural resources” does not include
343 the performance or furnishing of work, or materials or work,
344 in fulfillment of a contract for the construction, alteration,
345 repair, decoration or improvement of a new or existing
346 building or structure, or any part thereof, or for the alteration,
347 improvement or development of real property, by persons
348 other than those otherwise directly engaged in the activities
349 specifically set forth in this subdivision as “production of
350 natural resources”.

351 (15) “Providing a public service or the operating of a
352 utility business” means the providing of a public service or
353 the operating of a utility by businesses subject to the business
354 and occupation tax imposed by sections two and two-d,
355 article thirteen of this chapter.

356 (16) “Purchaser” means a person who purchases tangible
357 personal property, custom software or a service taxed by this
358 article.

359 (17) “Sale”, “sales” or “selling” includes any transfer of
360 the possession or ownership of tangible personal property or
361 custom software for a consideration, including a lease or
362 rental, when the transfer or delivery is made in the ordinary
363 course of the transferor's business and is made to the
364 transferee or his or her agent for consumption or use or any
365 other purpose. “Sale” also includes the furnishing of a
366 service for consideration. Notwithstanding anything to the
367 contrary in this code, effective after the thirtieth day of June,
368 two thousand eight, “sale” also includes the furnishing of
369 prepaid wireless calling service for consideration.

370 (18) “Service” or “selected service” includes all
371 nonprofessional activities engaged in for other persons for a
372 consideration, which involve the rendering of a service as
373 distinguished from the sale of tangible personal property or
374 custom software, but does not include contracting, personal

375 services or the services rendered by an employee to his or her
376 employer or any service rendered for resale: *Provided*, That
377 the term “service” or “selected service” does not include
378 payments received by a vendor of tangible personal property
379 as an incentive to sell a greater volume of such tangible
380 personal property under a manufacturer’s, distributor’s or
381 other third party’s marketing support program, sales incentive
382 program, cooperative advertising agreement or similar type
383 of program or agreement, and these payments are not
384 considered to be payments for a “service” or “selected
385 service” rendered, even though the vendor may engage in
386 attendant or ancillary activities associated with the sales of
387 tangible personal property as required under the programs or
388 agreements.

389 (19) “Streamlined Sales and Use Tax Agreement” or
390 “agreement”, when used in this article, has the same meaning
391 as when used in article fifteen-b of this chapter, except when
392 the context in which the word “agreement” is used clearly
393 indicates that a different meaning is intended by the
394 Legislature.

395 (20) “Tax” includes all taxes, additions to tax, interest
396 and penalties levied under this article or article ten of this
397 chapter.

398 (21) “Tax Commissioner” means the State Tax
399 Commissioner or his or her delegate. The term “delegate” in
400 the phrase “or his or her delegate”, when used in reference to
401 the Tax Commissioner, means any officer or employee of the
402 State Tax Division duly authorized by the Tax Commissioner
403 directly, or indirectly by one or more redelegations of
404 authority, to perform the functions mentioned or described in
405 this article or rules promulgated for this article.

406 (22) “Taxpayer” means any person liable for the tax
407 imposed by this article or additions to tax, penalties and
408 interest imposed by article ten of this chapter.

409 (23) “Transmission” means the act or process of causing
410 liquid, natural gas or electricity to pass or be conveyed from
411 one place or geographical location to another place or
412 geographical location through a pipeline or other medium for
413 commercial purposes.

414 (24) “Transportation” means the act or process of
415 conveying, as a commercial enterprise, passengers or goods
416 from one place or geographical location to another place or
417 geographical location.

418 (25) “Ultimate consumer” or “consumer” means a person
419 who uses or consumes services or personal property.

420 (26) “Vendor” means any person engaged in this state in
421 furnishing services taxed by this article or making sales of
422 tangible personal property or custom software. “Vendor” and
423 “seller” are used interchangeably in this article.

424 (c) *Additional definitions.* — Other terms used in this
425 article are defined in article fifteen-b of this chapter, which
426 definitions are incorporated by reference into article fifteen
427 of this chapter. Additionally, other sections of this article
428 may define terms primarily used in the section in which the
429 term is defined.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article shall
2 be deposited in the General Revenue Fund of the state except
3 as otherwise expressly provided in this article.

4 (b) *School Major Improvement Fund.* --

5 After the payment or commitment of the proceeds or
6 collections of this tax for the purposes set forth in sections
7 sixteen and eighteen of this article, on the first day of each

8 month, there shall be dedicated monthly from the collections
9 of this tax, the amount of four hundred sixteen thousand six
10 hundred sixty-seven dollars and the amount dedicated shall
11 be deposited on a monthly basis into the School Major
12 Improvement Fund created pursuant to section six, article
13 nine-d, chapter eighteen of this code.

14 (c) *School Construction Fund.* --

15 After the payment or commitment of the proceeds or
16 collections of this tax for the purposes set forth in sections
17 sixteen and eighteen of this article:

18 (1) On the first day of each month, there shall be
19 dedicated monthly from the collections of this tax the amount
20 of one million four hundred sixteen thousand six hundred
21 sixty-seven dollars and the amount dedicated shall be
22 deposited into the School Construction Fund created pursuant
23 to section six, article nine-d, chapter eighteen of this code.

24 (2) Effective the first day of July, one thousand nine
25 hundred ninety-eight, there shall be dedicated from the
26 collections of this tax an amount equal to any annual
27 difference that may occur between the debt service payment
28 for the one thousand nine hundred ninety-seven fiscal year
29 for school improvement bonds issued under the Better School
30 Building Amendment under the provisions of article nine-c,
31 chapter eighteen of this code and the amount of funds
32 required for debt service on these school improvement bonds
33 in any current fiscal year thereafter. This annual difference
34 shall be prorated monthly, added to the monthly deposit in
35 subdivision (1) of this subsection and deposited into the
36 School Construction Fund created pursuant to section six,
37 article nine-d, chapter eighteen of this code.

38 (d) *Prepaid wireless calling service.* -- The proceeds or
39 collections of this tax from the sale of prepaid wireless
40 service are dedicated as follows:

41 (1) The tax imposed by this article upon the sale of
42 prepaid wireless calling service is in lieu of the wireless
43 enhanced 911 fee imposed by section six-b, article six,
44 chapter twenty-four of this code.

45 (2) Within thirty days following the end of each calendar
46 month, the Tax Commissioner shall remit to the Public
47 Service Commission the proceeds of the tax imposed by this
48 article upon the sale of prepaid wireless calling service in the
49 preceding month, determined as follows: For purposes of
50 determining the amount of those monthly proceeds, the Tax
51 Commissioner shall use an amount equal to one twelfth of the
52 wireless enhanced 911 fees collected from prepaid wireless
53 calling service under section six-b, article six, chapter
54 twenty-four of this code during the period beginning on the
55 first day of July, two thousand seven, and ending on the last
56 day of June, two thousand eight. Beginning on the first day
57 of July, two thousand nine, the Tax Commissioner shall
58 adjust this amount annually by an amount proportionate to
59 the increase or decrease in the enhanced wireless 911 fees
60 paid to the Public Service Commission under said section
61 during the previous twelve months. The Public Service
62 Commission shall receive, deposit and disburse the proceeds
63 in the manner prescribed in said section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

§24-6-6b. Wireless enhanced 911 fee.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) “Commercial mobile radio service provider” or
4 “CMRS provider” means cellular licensees, broadband
5 personal communications services (PCS) licensees and
6 specialized mobile radio (SMR) providers, as those terms are
7 defined by the Federal Communications Commission, which
8 offer on a post-paid or prepaid basis or via a combination of
9 those two methods, real-time, two-way switched voice
10 service that is interconnected with the public switched
11 network and includes resellers of any commercial mobile
12 radio service.

13 (2) “County answering point” means a facility to which
14 enhanced emergency telephone system calls for a county are
15 initially routed for response and where county personnel
16 respond to specific requests for emergency service by directly
17 dispatching the appropriate emergency service provider,
18 relaying a message to the appropriate provider or transferring
19 the call to the appropriate provider.

20 (3) “Emergency services organization” means the
21 organization established under article five, chapter fifteen of
22 this code.

23 (4) “Emergency service provider” means any emergency
24 services organization or public safety unit.

25 (5) “Emergency telephone system” means a telephone
26 system which through normal telephone service facilities
27 automatically connects a person dialing the primary
28 emergency telephone number to an established public agency
29 answering point, but does not include an enhanced
30 emergency telephone system.

31 (6) “Enhanced emergency telephone system” means a
32 telephone system which automatically connects the person
33 dialing the primary emergency number to the county
34 answering point and in which the telephone network system

35 automatically provides to personnel receiving the call,
36 immediately on answering the call, information on the
37 location and the telephone number from which the call is
38 being made and, upon direction from the personnel receiving
39 the call, routes or dispatches the call by telephone, radio or
40 any other appropriate means of communication to emergency
41 service providers that serve the location from which the call
42 is made.

43 (7) "Prepaid wireless calling service" means prepaid
44 wireless calling service as defined in section two, article
45 fifteen, chapter eleven of this code.

46 (8) "Public agency" means the state and any
47 municipality, county, public district or public authority which
48 provides or has authority to provide fire fighting, police,
49 ambulance, medical, rescue or other emergency services.

50 (9) "Public safety unit" means a functional division of a
51 public agency which provides fire fighting, police, medical,
52 rescue or other emergency services.

53 (10) "Telephone company" means any public utility and
54 any CMRS provider which is engaged in the provision of
55 telephone service whether primarily by means of wire or
56 wireless facilities.

57 (11) "Comprehensive plan" means a plan pertaining to
58 the installing, modifying or replacing of telephone switching
59 equipment; a telephone utility's response in a timely manner
60 to requests for emergency telephone service by a public
61 agency; a telephone utility's responsibility to report to the
62 Public Service Commission; charges and tariffs for the
63 services and facilities provided by a telephone utility; and
64 access to an emergency telephone system by emergency
65 service organizations.

66 (12) “Technical and operational standards” means those
67 standards of telephone equipment and processes necessary
68 for the implementation of the comprehensive plan as defined
69 in subdivision (11) of this subsection.

§24-6-6b. Wireless enhanced 911 fee.

1 (a) All CMRS providers as defined in section two of this
2 article shall, on a monthly basis or otherwise for good cause
3 and as directed by order of the Public Service Commission,
4 collect from each of their in-state two-way service
5 subscribers a wireless enhanced 911 fee. As used in this
6 section “in-state two-way service subscriber” shall have the
7 same meaning as that set forth in the rules of the Public
8 Service Commission. No later than the first day of June, two
9 thousand six, the Public Service Commission shall, after the
10 receipt of comments and the consideration of evidence
11 presented at a hearing, issue an updated order which directs
12 the CMRS providers regarding all relevant details of wireless
13 enhanced 911 fee collection, including the determination of
14 who is considered an in-state two-way service subscriber and
15 which shall specify how the CMRS providers shall deal with
16 fee collection shortfalls caused by uncollectible accounts.
17 The Public Service Commission shall solicit the views of the
18 wireless telecommunications utilities prior to issuing the
19 order.

20 (b) The wireless enhanced 911 fee is three dollars per
21 month for each valid retail commercial mobile radio service
22 subscription, as that term is defined by the Public Service
23 Commission in its order issued under subsection (a) of this
24 section: *Provided*, That beginning on the first day of July,
25 two thousand five, the wireless enhanced 911 fee shall
26 include ten cents to be distributed to the West Virginia State
27 Police to be used for equipment upgrades for improving and
28 integrating their communication efforts with those of the
29 enhanced 911 systems: *Provided, however*, That for the fiscal

30 year beginning on the first day of July, two thousand five,
31 and for every fiscal year thereafter, one million dollars of the
32 wireless enhanced 911 fee shall be distributed by the Public
33 Service Commission to subsidize the construction of towers.
34 The moneys shall be deposited in a fund administered by the
35 West Virginia Public Service Commission, entitled Enhanced
36 911 Wireless Tower Access Assistance Fund, and shall be
37 expended in accordance with an enhanced 911 wireless tower
38 access matching grant order adopted by the Public Service
39 Commission. The commission order shall contain terms and
40 conditions designed to provide financial assistance loans or
41 grants to state agencies, political subdivisions of the state and
42 wireless telephone carriers for the acquisition, equipping and
43 construction of new wireless towers, which would provide
44 enhanced 911 service coverage and which would not be
45 available otherwise due to marginal financial viability of the
46 applicable tower coverage area: *Provided further*, That the
47 grants shall be allocated among potential sites based on
48 application from county commissions demonstrating the need
49 for enhanced 911 wireless coverage in specific areas of this
50 state. Any tower constructed with assistance from the fund
51 created by this subdivision shall be available for use by
52 emergency services, fire departments and law-enforcement
53 agencies communication equipment, so long as that use does
54 not interfere with the carrier's wireless signal: *And provided*
55 *further*, That the Public Service Commission shall
56 promulgate rules in accordance with article three, chapter
57 twenty-nine-a of this code to effectuate the provisions of this
58 subsection. The Public Service Commission is specifically
59 authorized to promulgate emergency rules: *And provided*
60 *further*, That for the fiscal year beginning on the first day of
61 July, two thousand six, and for every fiscal year thereafter,
62 five percent of the wireless enhanced 911 fee money received
63 by the Public Service Commission shall be deposited in a
64 special fund established by the Division of Homeland
65 Security and Emergency Management to be used solely for

66 the construction, maintenance and upgrades of the West
67 Virginia Interoperable Radio Project and any other costs
68 associated with establishing and maintaining the
69 infrastructure of the system. Any funds remaining in this
70 fund at the end of the fiscal year shall automatically be
71 reappropriated for the following year.

72 (c) Beginning in the year one thousand nine hundred
73 ninety-seven, and every two years thereafter, the Public
74 Service Commission shall conduct an audit of the wireless
75 enhanced 911 fee and shall recalculate the fee so that it is the
76 weighted average rounded to the nearest penny, as of the first
77 day of March of the respecification year, of all of the
78 enhanced 911 fees imposed by the counties which have
79 adopted an enhanced 911 ordinance: *Provided*, That the
80 wireless enhanced 911 fee may never be increased by more
81 than twenty-five percent of its value at the beginning of the
82 respecification year: *Provided, however*, That the fee may
83 never be less than the amount set in subsection (b) of this
84 section: *Provided further*, That beginning on the first day of
85 July, two thousand five, the wireless enhanced 911 fee shall
86 include ten cents to be distributed to the West Virginia State
87 Police to be used for equipment upgrades for improving and
88 integrating their communication efforts with those of the
89 enhanced 911 systems: *And provided further*, That beginning
90 on the first day of July, two thousand five, one million dollars
91 of the wireless enhanced 911 fee shall be distributed by the
92 Public Service Commission to subsidize the construction of
93 wireless towers as specified in said subsection.

94 (d) The CMRS providers shall, after retaining a
95 three-percent billing fee, send the wireless enhanced 911 fee
96 moneys collected, on a monthly basis, to the Public Service
97 Commission. The Public Service Commission shall, on a
98 quarterly and approximately evenly staggered basis, disburse
99 the fee revenue in the following manner:

100 (1) Each county that does not have a 911 ordinance in
101 effect as of the original effective date of this section in the
102 year one thousand nine hundred ninety-seven or has enacted
103 a 911 ordinance within the five years prior to the original
104 effective date of this section in the year one thousand nine
105 hundred ninety-seven shall receive eight and one-half tenths
106 of one percent of the fee revenues received by the Public
107 Service Commission: *Provided*, That after the effective date
108 of this section, in the year two thousand five, when two or
109 more counties consolidate into one county to provide
110 government services, the consolidated county shall receive
111 one percent of the fee revenues received by the Public
112 Service Commission for itself and for each county merged
113 into the consolidated county. Each county shall receive eight
114 and one-half tenths of one percent of the remainder of the fee
115 revenues received by the Public Service Commission:
116 *Provided, however*, That after the effective date of this
117 section, in the year two thousand five, when two or more
118 counties consolidate into one county to provide government
119 services, the consolidated county shall receive one percent of
120 the fee revenues received by the Public Service Commission
121 for itself and for each county merged into the consolidated
122 county. Then, from any moneys remaining, each county shall
123 receive a pro rata portion of that remainder based on that
124 county's population as determined in the most recent
125 decennial census as a percentage of the state total population.
126 The Public Service Commission shall recalculate the county
127 disbursement percentages on a yearly basis, with the changes
128 effective on the first day of July, and using data as of the
129 preceding first day of March. The public utilities which
130 normally provide local exchange telecommunications service
131 by means of lines, wires, cables, optical fibers or by other
132 means extended to subscriber premises shall supply the data
133 to the Public Service Commission on a county specific basis
134 no later than the first day of June of each year;

135 (2) Counties which have an enhanced 911 ordinance in
136 effect shall receive their share of the wireless enhanced 911

137 fee revenue for use in the same manner as the enhanced 911
138 fee revenues received by those counties pursuant to their
139 enhanced 911 ordinances;

140 (3) The Public Service Commission shall deposit the
141 wireless enhanced 911 fee revenue for each county which
142 does not have an enhanced 911 ordinance in effect into an
143 escrow account which it has established for that county. Any
144 county with an escrow account may, immediately upon
145 adopting an enhanced 911 ordinance, receive the moneys
146 which have accumulated in the escrow account for use as
147 specified in subdivision (2) of this subsection: *Provided*, That
148 a county that adopts a 911 ordinance after the original
149 effective date of this section in the year one thousand nine
150 hundred ninety-seven or has adopted a 911 ordinance within
151 five years of the original effective date of this section in the
152 year one thousand nine hundred ninety-seven shall continue
153 to receive one percent of the total 911 fee revenue for a
154 period of five years following the adoption of the ordinance.
155 Thereafter, each county shall receive that county's eight and
156 one-half tenths of one percent of the remaining fee revenue,
157 plus that county's additional pro rata portion of the fee
158 revenues then remaining, based on that county's population
159 as determined in the most recent decennial census as a
160 percentage of the state total population: *Provided, however*,
161 That every five years from the year one thousand nine
162 hundred ninety-seven, all fee revenue residing in escrow
163 accounts shall be disbursed on the pro rata basis specified in
164 subdivision (1) of this subsection, except that data for
165 counties without enhanced 911 ordinances in effect shall be
166 omitted from the calculation and all escrow accounts shall
167 begin again with a zero balance.

168 (e) CMRS providers have the same rights and
169 responsibilities as other telephone service suppliers in dealing
170 with the failure by a subscriber of a CMRS provider to timely
171 pay the wireless enhanced 911 fee.

172 (f) Notwithstanding the provisions of section one-a of
173 this article, for the purposes of this section, the term “county”
174 means one of the counties provided in section one, article
175 one, chapter one of this code.

176 (g) From any funds distributed to a county pursuant to
177 this section, a total of three percent shall be set aside in a
178 special fund to be used exclusively for the purchase of
179 equipment that will provide information regarding the x and
180 y coordinates of persons who call an emergency telephone
181 system through a commercial mobile radio service: *Provided,*
182 That upon purchase of the necessary equipment, the special
183 fund shall be dissolved and any surplus shall be used for
184 general operation of the emergency telephone system as may
185 otherwise be provided by law.

186 (h) Notwithstanding anything to the contrary in this code,
187 beginning the first day of July, two thousand eight, prepaid
188 wireless calling service is no longer subject to the wireless
189 enhanced 911 fee.



CHAPTER 217

**(Com. Sub. for S.B. 474 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-15-9k, relating
to providing a limited annual exemption from the consumers
sales and service tax for purchases of eligible specified exempt
Energy Star qualified products; specifying time period for
exemption; and specifying definition.

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 §11-15-9k, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9k. Annual exemption for purchases of energy efficient products.

1 (a) There is established an annual sales tax holiday on the
2 sale of specified Energy Star qualified products from the
3 taxes imposed by this article if:

4 (1)(A) The sales price of the specified Energy Star
5 qualified product is two thousand five hundred dollars or less
6 per purchase for noncommercial home or personal use; and

7 (B) The sale takes place in two thousand eight during a
8 period beginning at 12:01 a.m. eastern daylight time on the
9 first day of September and ending at 11:59 p.m. eastern
10 daylight time on the seventh day of September; or

11 (2)(A) The sales price of the specified Energy Star
12 qualified product is five thousand dollars or less per purchase
13 for noncommercial home or personal use; and

14 (B) The sale takes place in two thousand nine during a
15 period beginning at 12:01 a.m. eastern daylight time on the
16 first day of September and ending at 11:59 p.m. eastern
17 daylight time on the thirtieth day of November; or

18 (C) In two thousand ten during a period beginning at
19 12:01 a.m. eastern daylight time on the first day of September
20 and ending at 11:59 p.m. eastern daylight time on the thirtieth
21 day of November.

22 (b) This section does not apply to tangible personal
23 property for use in a trade or business.

24 (c) *Definition.* -- As used in this section, the term “Energy
25 Star qualified product” means a product that meets the energy
26 efficient guidelines set by the United States Environmental
27 Protection Agency and the United States Department of
28 Energy that are authorized to carry the Energy Star label.
29 Covered products are those listed at www.energystar.gov or
30 successor address.



CHAPTER 218

(Com. Sub. for S.B. 596- By Senators Helmick and Love)

[Passed March 8, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to repeal §11-15B-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-2b, §11-15B-10, §11-15B-11, §11-15B-12, §11-15B-14, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-27, §11-15B-28, §11-15B-30 and §11-15B-32 of said code, all relating to Streamlined Sales and Use Tax Agreement and the West Virginia consumers sales and service tax and use tax; defining terms; specifying applicable dates; specifying procedures; providing relief from liability in specified circumstances; specifying certain sourcing rules; specifying interpretation; specifying discovery criteria; specifying monetary allowance criteria; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15B-16 of the Code of West Virginia, 1931, as amended, be repealed; and that §11-15B-2, §11-15B-2a, §11-15B-2b, §11-15B-10, §11-15B-11, §11-15B-12, §11-15B-14, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-27, §11-15B-28, §11-15B-30 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

- §11-15B-2. Definitions.
- §11-15B-2a. Streamlined Sales and Use Tax Agreement defined.
- §11-15B-2b. Telecommunications definitions.
- §11-15B-10. Seller and third-party liability.
- §11-15B-11. Seller registration under Streamlined Sales and Use Tax Agreement.
- §11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.
- §11-15B-14. General sourcing definitions.
- §11-15B-14a. Application of general sourcing rules and exclusion from the rules.
- §11-15B-15. General transaction sourcing rules.
- §11-15B-18. Relief from certain liability for purchasers.
- §11-15B-19. Telecommunications and related services sourcing rule.
- §11-15B-20. Telecommunication sourcing definitions.
- §11-15B-24. Administration of exemptions.
- §11-15B-25. Uniform tax returns.
- §11-15B-26. Uniform rules for remittances of funds.
- §11-15B-27. Uniform rules for recovery of bad debt.
- §11-15B-28. Confidentiality and privacy protections under Model I.
- §11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.
- §11-15B-32. Effective date.

§11-15B-2. Definitions.

- 1 (a) *General.* -- When used in this article and articles
- 2 fifteen and fifteen-a of this chapter, words defined in
- 3 subsection (b) of this section shall have the meanings
- 4 ascribed to them in this section, except in those instances
- 5 where a different meaning is distinctly expressed or the
- 6 context in which the term is used clearly indicates that a
- 7 different meaning is intended by the Legislature.

8 (b) *Terms defined.* —

9 (1) "Agent" means a person appointed by a seller to
10 represent the seller before the member states.

11 (2) "Agreement" means the Streamlined Sales and Use
12 Tax Agreement as defined in section two-a of this article.

13 (3) "Alcoholic beverages" means beverages that are
14 suitable for human consumption and contain one half of one
15 percent or more of alcohol by volume.

16 (4) "Bundled transaction" means the retail sale of two or
17 more products, except real property and services to real
18 property, where: (i) The products are otherwise distinct and
19 identifiable; and (ii) the products are sold for one
20 nonitemized price. A "bundled transaction" does not include
21 the sale of any products in which the "sales price" varies, or
22 is negotiable, based on the selection by the purchaser of the
23 products included in the transaction.

24 (A) "Distinct and identifiable products" does not include:

25 (i) Packaging such as containers, boxes, sacks, bags and
26 bottles or other materials such as wrapping, labels, tags and
27 instruction guides that accompany the "retail sale" of the
28 products and are incidental or immaterial to the "retail sale"
29 thereof. Examples of packaging that are incidental or
30 immaterial include grocery sacks, shoe boxes, dry cleaning
31 garment bags and express delivery envelopes and boxes;

32 (ii) A product provided free of charge with the required
33 purchase of another product. A product is "provided free of
34 charge" if the "sales price" of the product purchased does not
35 vary depending on the inclusion of the product "provided free
36 of charge"; or

37 (iii) Items included in the member state's definition of
38 "sales price", as defined in this section.

39 (B) The term "one nonitemized price" does not include a
40 price that is separately identified by product on binding sales
41 or other supporting sales-related documentation made
42 available to the customer in paper or electronic form
43 including, but not limited to, an invoice, bill of sale, receipt,
44 contract, service agreement, lease agreement, periodic notice
45 of rates and services, rate card or price list.

46 (C) A transaction that otherwise meets the definition of
47 a "bundled transaction", as defined in this subdivision, is not
48 a "bundled transaction" if it is:

49 (i) The "retail sale" of tangible personal property and a
50 service where the tangible personal property is essential to
51 the use of the service and is provided exclusively in
52 connection with the service and the true object of the
53 transaction is the service; or

54 (ii) The "retail sale" of services where one service is
55 provided that is essential to the use or receipt of a second
56 service and the first service is provided exclusively in
57 connection with the second service and the true object of the
58 transaction is the second service; or

59 (iii) A transaction that includes taxable products and
60 nontaxable products and the "purchase price" or "sales price"
61 of the taxable products is de minimis.

62 (I) "De minimis" means the seller's "purchase price" or
63 "sales price" of the taxable products is ten percent or less of
64 the total "purchase price" or "sales price" of the bundled
65 products.

66 (II) Sellers shall use either the "purchase price" or the
67 "sales price" of the products to determine if the taxable

68 products are de minimis. Sellers may not use a combination
69 of the "purchase price" and "sales price" of the products to
70 determine if the taxable products are de minimis.

71 (III) Sellers shall use the full term of a service contract to
72 determine if the taxable products are de minimis; or

73 (iv) A transaction that includes products taxable at the
74 general rate of tax and food or food ingredients taxable at a
75 lower rate of tax and the "purchase price" or "sales price" of
76 the products taxable at the general sales tax rate is de
77 minimis. For purposes of this subparagraph, the term "de
78 minimis" has the same meaning as ascribed to it under
79 subparagraph (iii) of this paragraph.

80 (v) The "retail sale" of exempt tangible personal property,
81 or food and food ingredients taxable at a lower rate of tax,
82 and tangible personal property taxable at the general rate of
83 tax where:

84 (I) The transaction includes "food and food ingredients",
85 "drugs", "durable medical equipment", "mobility-enhancing
86 equipment", "over-the-counter drugs", "prosthetic devices"
87 or medical supplies, all as defined in this article; and

88 (II) Where the seller's "purchase price" or "sales price" of
89 the taxable tangible personal property taxable at the general
90 rate of tax is fifty percent or less of the total "purchase price"
91 or "sales price" of the bundled tangible personal property.
92 Sellers may not use a combination of the "purchase price"
93 and "sales price" of the tangible personal property when
94 making the fifty percent determination for a transaction.

95 (5) "Candy" means a preparation of sugar, honey or other
96 natural or artificial sweeteners in combination with chocolate,
97 fruits, nuts or other ingredients or flavorings in the form of
98 bars, drops or pieces. "Candy" shall not include any

99 preparation containing flour and shall require no
100 refrigeration.

101 (6) “Clothing” means all human wearing apparel suitable
102 for general use. The following list contains examples and is
103 not intended to be an all-inclusive list.

104 (A) “Clothing” shall include:

105 (i) Aprons, household and shop;

106 (ii) Athletic supporters;

107 (iii) Baby receiving blankets;

108 (iv) Bathing suits and caps;

109 (v) Beach capes and coats;

110 (vi) Belts and suspenders;

111 (vii) Boots;

112 (viii) Coats and jackets;

113 (ix) Costumes;

114 (x) Diapers, children and adult, including disposable
115 diapers;

116 (xi) Ear muffs;

117 (xii) Footlets;

118 (xiii) Formal wear;

119 (xiv) Garters and garter belts;

- 120 (xv) Girdles;
- 121 (xvi) Gloves and mittens for general use;
- 122 (xvii) Hats and caps;
- 123 (xviii) Hosiery;
- 124 (xix) Insoles for shoes;
- 125 (xx) Lab coats;
- 126 (xxi) Neckties;
- 127 (xxii) Overshoes;
- 128 (xxiii) Pantyhose;
- 129 (xxiv) Rainwear;
- 130 (xxv) Rubber pants;
- 131 (xxvi) Sandals;
- 132 (xxvii) Scarves;
- 133 (xxviii) Shoes and shoe laces;
- 134 (xxix) Slippers;
- 135 (xxx) Sneakers;
- 136 (xxxi) Socks and stockings;
- 137 (xxxii) Steel-toed shoes;
- 138 (xxxiii) Underwear;

139 (xxxiv) Uniforms, athletic and nonathletic; and

140 (xxxv) Wedding apparel.

141 (B) "Clothing" shall not include:

142 (i) Belt buckles sold separately;

143 (ii) Costume masks sold separately;

144 (iii) Patches and emblems sold separately;

145 (iv) Sewing equipment and supplies including, but not
146 limited to, knitting needles, patterns, pins, scissors, sewing
147 machines, sewing needles, tape measures and thimbles; and

148 (v) Sewing materials that become part of "clothing"
149 including, but not limited to, buttons, fabric, lace, thread,
150 yarn and zippers.

151 (7) "Clothing accessories or equipment" means incidental
152 items worn on the person or in conjunction with "clothing".
153 "Clothing accessories or equipment" are mutually exclusive
154 of and may be taxed differently than apparel within the
155 definition of "clothing", "sport or recreational equipment"
156 and "protective equipment". The following list contains
157 examples and is not intended to be an all-inclusive list.
158 "Clothing accessories or equipment" shall include:

159 (a) Briefcases;

160 (b) Cosmetics;

161 (c) Hair notions, including, but not limited to, barrettes,
162 hair bows and hair nets;

163 (d) Handbags;

164 (e) Handkerchiefs;

165 (f) Jewelry;

166 (g) Sunglasses, nonprescription;

167 (h) Umbrellas;

168 (i) Wallets;

169 (j) Watches; and

170 (k) Wigs and hair pieces.

171 (8) "Certified automated system" or "CAS" means
172 software certified under the agreement to calculate the tax
173 imposed by each jurisdiction on a transaction, determine the
174 amount of tax to remit to the appropriate state and maintain
175 a record of the transaction.

176 (9) "Certified service provider" or "CSP" means an agent
177 certified under the agreement to perform all of the seller's
178 sales and use tax functions other than the seller's obligation
179 to remit tax on its own purchases.

180 (10) "Computer" means an electronic device that accepts
181 information in digital or similar form and manipulates the
182 information for a result based on a sequence of instructions.

183 (11) "Computer software" means a set of coded
184 instructions designed to cause a "computer" or automatic data
185 processing equipment to perform a task.

186 (12) "Delivered" means delivered to the purchaser by
187 means other than tangible storage media.

188 (13) "Delivery charges" means charges by the seller of
189 personal property or services for preparation and delivery to

190 a location designated by the purchaser of personal property
191 or services including, but not limited to, transportation,
192 shipping, postage, handling, crating and packing.

193 (14) "Dietary supplement" means any product, other than
194 "tobacco", intended to supplement the diet that:

195 (A) Contains one or more of the following dietary
196 ingredients:

197 (i) A vitamin;

198 (ii) A mineral;

199 (iii) An herb or other botanical;

200 (iv) An amino acid;

201 (v) A dietary substance for use by humans to supplement
202 the diet by increasing the total dietary intake; or

203 (vi) A concentrate, metabolite, constituent, extract or
204 combination of any ingredient described in subparagraph (i)
205 through (v), inclusive, of this paragraph;

206 (B) And is intended for ingestion in tablet, capsule,
207 powder, softgel, gelcap or liquid form, or if not intended for
208 ingestion in such a form, is not represented as conventional
209 food and is not represented for use as a sole item of a meal or
210 of the diet; and

211 (C) Is required to be labeled as a dietary supplement,
212 identifiable by the "Supplemental Facts" box found on the
213 label as required pursuant to 21 CFR §101.36 or in any
214 successor section of the Code of Federal Regulations.

215 (15) "Direct mail" means printed material delivered or
216 distributed by United States mail or other delivery service to

217 a mass audience or to addressees on a mailing list provided
218 by the purchaser or at the direction of the purchaser when the
219 cost of the items are not billed directly to the recipients.
220 "Direct mail" includes tangible personal property supplied
221 directly or indirectly by the purchaser to the direct mail seller
222 for inclusion in the package containing the printed material.
223 "Direct mail" does not include multiple items of printed
224 material delivered to a single address.

225 (16) "Drug" means a compound, substance or
226 preparation, and any component of a compound, substance or
227 preparation, other than food and food ingredients, dietary
228 supplements or alcoholic beverages:

229 (A) Recognized in the official United States
230 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
231 United States or official National Formulary, and supplement
232 to any of them;

233 (B) Intended for use in the diagnosis, cure, mitigation,
234 treatment or prevention of disease in humans; or

235 (C) Intended to affect the structure or any function of the
236 human body.

237 (17) "Durable medical equipment" means equipment
238 including repair and replacement parts for the equipment, but
239 does not include "mobility-enhancing equipment", which:

240 (A) Can withstand repeated use;

241 (B) Is primarily and customarily used to serve a medical
242 purpose;

243 (C) Generally is not useful to a person in the absence of
244 illness or injury; and

245 (D) Is not worn in or on the body.

246 (18) "Electronic" means relating to technology having
247 electrical, digital, magnetic, wireless, optical, electromagnetic
248 or similar capabilities.

249 (19) "Eligible property" means an item of a type, such as
250 clothing, that qualifies for a sales tax holiday exemption in
251 this state.

252 (20) "Energy Star qualified product" means a product that
253 meets the energy efficient guidelines set by the United States
254 Environmental Protection Agency and the United States
255 Department of Energy that are authorized to carry the Energy
256 Star label. Covered products are those listed at
257 www.energystar.gov or successor address.

258 (21) "Entity-based exemption" means an exemption
259 based on who purchases the product or service or who sells
260 the product or service. An exemption that is available to all
261 individuals shall not be considered an entity-based
262 exemption.

263 (22) "Food and food ingredients" means substances,
264 whether in liquid, concentrated, solid, frozen, dried or
265 dehydrated form, that are sold for ingestion or chewing by
266 humans and are consumed for their taste or nutritional value.
267 "Food and food ingredients" does not include alcoholic
268 beverages, prepared food or tobacco.

269 (23) "Food sold through vending machines" means food
270 dispensed from a machine or other mechanical device that
271 accepts payment.

272 (24) "Fur clothing" means "clothing" that is required to
273 be labeled as a fur product under the Federal Fur Products
274 Labeling Act (15 U. S. C. §69) and the value of the fur
275 components in the product is more than three times the value
276 of the next most valuable tangible component. "Fur

277 clothing” is human-wearing apparel suitable for general use
278 but may be taxed differently from “clothing”. For the
279 purposes of the definition of “fur clothing”, the term “fur”
280 means any animal skin or part thereof with hair, fleece or fur
281 fibers attached thereto, either in its raw or processed state, but
282 shall not include such skins that have been converted into
283 leather or suede, or which in processing, the hair, fleece or
284 fur fiber has been completely removed.

285 (25) "Governing board" means the governing board of the
286 Streamlined Sales and Use Tax Agreement.

287 (26) “Grooming and hygiene products” are soaps and
288 cleaning solutions, shampoo, toothpaste, mouthwash,
289 antiperspirants and sun tan lotions and screens, regardless of
290 whether the items meet the definition of “over-the-counter
291 drugs”.

292 (27) "Includes" and "including" when used in a definition
293 contained in this article is not considered to exclude other
294 things otherwise within the meaning of the term being
295 defined.

296 (28) "Layaway sale" means a transaction in which
297 property is set aside for future delivery to a customer who
298 makes a deposit, agrees to pay the balance of the purchase
299 price over a period of time and, at the end of the payment
300 period, receives the property. An order is accepted for
301 layaway by the seller when the seller removes the property
302 from normal inventory or clearly identifies the property as
303 sold to the purchaser.

304 (29) "Lease" includes rental, hire and license. "Lease"
305 means any transfer of possession or control of tangible
306 personal property for a fixed or indeterminate term for
307 consideration. A lease or rental may include future options
308 to purchase or extend.

309 (A) "Lease" does not include:

310 (i) A transfer of possession or control of property under
311 a security agreement or deferred payment plan that requires
312 the transfer of title upon completion of the required
313 payments;

314 (ii) A transfer or possession or control of property under
315 an agreement that requires the transfer of title upon
316 completion of required payments and payment of an option
317 price does not exceed the greater of one hundred dollars or
318 one percent of the total required payments; or

319 (iii) Providing tangible personal property along with an
320 operator for a fixed or indeterminate period of time. A
321 condition of this exclusion is that the operator is necessary
322 for the equipment to perform as designed. For the purpose of
323 this subparagraph, an operator must do more than maintain,
324 inspect or set-up the tangible personal property.

325 (iv) "Lease" or "rental" includes agreements covering
326 motor vehicles and trailers where the amount of consideration
327 may be increased or decreased by reference to the amount
328 realized upon sale or disposition of the property as defined in
329 26 U. S. C.7701(h)(1).

330 (B) This definition shall be used for sales and use tax
331 purposes regardless if a transaction is characterized as a lease
332 or rental under generally accepted accounting principles, the
333 Internal Revenue Code, the Uniform Commercial Code or
334 other provisions of federal, state or local law.

335 (30) "Load and leave" means delivery to the purchaser by
336 use of a tangible storage media where the tangible storage
337 media is not physically transferred to the purchaser.

338 (31) "Mobility-enhancing equipment" means equipment,
339 including repair and replacement parts to the equipment, but
340 does not include "durable medical equipment", which:

341 (A) Is primarily and customarily used to provide or
342 increase the ability to move from one place to another and
343 which is appropriate for use either in a home or a motor
344 vehicle;

345 (B) Is not generally used by persons with normal
346 mobility; and

347 (C) Does not include any motor vehicle or equipment on
348 a motor vehicle normally provided by a motor vehicle
349 manufacturer.

350 (32) "Model I seller" means a seller that has selected a
351 certified service provider as its agent to perform all the
352 seller's sales and use tax functions, other than the seller's
353 obligation to remit tax on its own purchases.

354 (33) "Model II seller" means a seller that has selected a
355 certified automated system to perform part of its sales and
356 use tax functions, but retains responsibility for remitting the
357 tax.

358 (34) "Model III seller" means a seller that has sales in at
359 least five member states, has total annual sales revenue of at
360 least five hundred million dollars, has a proprietary system
361 that calculates the amount of tax due each jurisdiction and
362 has entered into a performance agreement with the member
363 states that establishes a tax performance standard for the
364 seller. As used in this definition, a seller includes an
365 affiliated group of sellers using the same proprietary system.

366 (35) "Over-the-counter drug" means a drug that contains
367 a label that identifies the product as a drug as required by 21
368 CFR §201.66. The "over-the-counter drug" label includes:

369 (A) A “drug facts” panel; or

370 (B) A statement of the “active ingredient(s)” with a list of
371 those ingredients contained in the compound, substance or
372 preparation.

373 (36) "Person" means an individual, trust, estate, fiduciary,
374 partnership, limited liability company, limited liability
375 partnership, corporation or any other legal entity.

376 (37) "Personal service" includes those:

377 (A) Compensated by the payment of wages in the
378 ordinary course of employment; and

379 (B) Rendered to the person of an individual without, at
380 the same time, selling tangible personal property, such as
381 nursing, barbering, manicuring and similar services.

382 (38) (A) "Prepared food" means:

383 (i) Food sold in a heated state or heated by the seller;

384 (ii) Two or more food ingredients mixed or combined by
385 the seller for sale as a single item; or

386 (iii) Food sold with eating utensils provided by the seller,
387 including plates, knives, forks, spoons, glasses, cups, napkins
388 or straws. A plate does not include a container or packaging
389 used to transport the food.

390 (B) "Prepared food" in subparagraph (ii), paragraph (A)
391 of this subdivision does not include food that is only cut,
392 repackaged or pasteurized by the seller, and eggs, fish, meat,
393 poultry and foods containing these raw animal foods
394 requiring cooking by the consumer as recommended by the
395 Food and Drug Administration in Chapter 3, Part 401.11 of
396 its Food Code of 2001 so as to prevent food-borne illnesses.

397 (C) Additionally, "prepared food" as defined in this
398 subdivision does not include:

399 (i) Food sold by a seller whose proper primary NAICS
400 classification is manufacturing in Sector 311, except
401 Subsection 3118 (bakeries);

402 (ii) Food sold in an unheated state by weight or volume
403 as a single item; or

404 (iii) Bakery items, including bread, rolls, buns, biscuits,
405 bagels, croissants, pastries, donuts, Danish, cakes, tortes,
406 pies, tarts, muffins, bars, cookies, tortillas.

407 (39) "Prescription" means an order, formula or recipe
408 issued in any form of oral, written, electronic or other means
409 of transmission by a duly licensed practitioner authorized by
410 the laws of this state to issue prescriptions.

411 (40) "Prewritten computer software" means "computer
412 software", including prewritten upgrades, which is not
413 designed and developed by the author or other creator to the
414 specifications of a specific purchaser.

415 (A) The combining of two or more prewritten computer
416 software programs or prewritten portions thereof does not
417 cause the combination to be other than prewritten computer
418 software.

419 (B) "Prewritten computer software" includes software
420 designed and developed by the author or other creator to the
421 specifications of a specific purchaser when it is sold to a
422 person other than the specific purchaser. Where a person
423 modifies or enhances computer software of which the person
424 is not the author or creator, the person is considered to be the
425 author or creator only of the person's modifications or
426 enhancements.

427 (C) "Prewritten computer software" or a prewritten
428 portion thereof that is modified or enhanced to any degree,
429 where the modification or enhancement is designed and
430 developed to the specifications of a specific purchaser,
431 remains prewritten computer software: *Provided*, That where
432 there is a reasonable, separately stated charge or an invoice
433 or other statement of the price given to the purchaser for the
434 modification or enhancement, the modification or
435 enhancement does not constitute prewritten computer
436 software.

437 (41) "Product-based exemption" means an exemption
438 based on the description of the product or service and not
439 based on who purchases the product or service or how the
440 purchaser intends to use the product or service.

441 (42) "Prosthetic device" means a replacement, corrective
442 or supportive device, including repair and replacement parts
443 for the device worn on or in the body, to:

444 (A) Artificially replace a missing portion of the body;

445 (B) Prevent or correct physical deformity or malfunction
446 of the body; or

447 (C) Support a weak or deformed portion of the body.

448 (43) "Protective equipment" means items for human wear
449 and designed as protection of the wearer against injury or
450 disease or as protections against damage or injury of other
451 persons or property but not suitable for general use.

452 (44) "Purchase price" means the measure subject to the
453 tax imposed by article fifteen or fifteen-a of this chapter and
454 has the same meaning as sales price.

455 (45) "Purchaser" means a person to whom a sale of
456 personal property is made or to whom a service is furnished.

457 (46) "Registered under this agreement" means
458 registration by a seller with the member states under the
459 central registration system provided in article four of the
460 agreement.

461 (47) "Retail sale" or "sale at retail" means:

462 (A) Any sale, lease or rental for any purpose other than
463 for resale as tangible personal property, sublease or subrent;
464 and

465 (B) Any sale of a service other than a service purchased
466 for resale.

467 (48) (A) "Sales price" means the measure subject to the
468 tax levied under articles fifteen or fifteen-a of this chapter
469 and includes the total amount of consideration, including
470 cash, credit, property and services, for which personal
471 property or services are sold, leased or rented, valued in
472 money, whether received in money or otherwise, without any
473 deduction for the following:

474 (i) The seller's cost of the property sold;

475 (ii) The cost of materials used, labor or service cost,
476 interest, losses, all costs of transportation to the seller, all
477 taxes imposed on the seller and any other expense of the
478 seller;

479 (iii) Charges by the seller for any services necessary to
480 complete the sale, other than delivery and installation
481 charges;

482 (iv) Delivery charges; and

483 (v) Installation charges.

484 (B) "Sales price" does not include:

485 (i) Discounts, including cash, term or coupons that are
486 not reimbursed by a third party that are allowed by a seller
487 and taken by a purchaser on a sale;

488 (ii) Interest, financing and carrying charges from credit
489 extended on the sale of personal property, goods or services,
490 if the amount is separately stated on the invoice, bill of sale
491 or similar document given to the purchaser; or

492 (iii) Any taxes legally imposed directly on the consumer
493 that are separately stated on the invoice, bill of sale or similar
494 document given to the purchaser.

495 (C) "Sales price" shall include consideration received by
496 the seller from third parties if:

497 (i) The seller actually receives consideration from a party
498 other than the purchaser and the consideration is directly
499 related to a price reduction or discount on the sale;

500 (ii) The seller has an obligation to pass the price
501 reduction or discount through to the purchaser;

502 (iii) The amount of the consideration attributable to the
503 sale is fixed and determinable by the seller at the time of the
504 sale of the item to the purchaser; and

505 (iv) One of the following criteria is met:

506 (I) The purchaser presents a coupon, certificate or other
507 documentation to the seller to claim a price reduction or
508 discount where the coupon, certificate or documentation is
509 authorized, distributed or granted by a third party with the
510 understanding that the third party will reimburse any seller to
511 whom the coupon, certificate or documentation is presented;

512 (II) The purchaser identifies himself or herself to the
513 seller as a member of a group or organization entitled to a

514 price reduction or discount (a "preferred customer" card that
515 is available to any patron does not constitute membership in
516 such a group); or

517 (III) The price reduction or discount is identified as a
518 third-party price reduction or discount on the invoice
519 received by the purchaser or on a coupon, certificate or other
520 documentation presented by the purchaser.

521 (49) "Sales tax" means the tax levied under article fifteen
522 of this chapter.

523 (50) "School art supply" means an item commonly used
524 by a student in a course of study for artwork. The term is
525 mutually exclusive of the terms "school supply", "school
526 instructional material" and "school computer supply" and
527 may be taxed differently. The following is an all-inclusive
528 list:

529 (A) Clay and glazes;

530 (B) Paints; acrylic, tempora and oil;

531 (C) Paintbrushes for artwork;

532 (D) Sketch and drawing pads; and

533 (E) Watercolors.

534 (51) "School instructional material" means written
535 material commonly used by a student in a course of study as
536 a reference and to learn the subject being taught. The term is
537 mutually exclusive of the terms "school supply", "school art
538 supply" and "school computer supply" and may be taxed
539 differently. The following is an all-inclusive list:

540 (A) Reference books;

541 (B) Reference maps and globes;

542 (C) Textbooks; and

543 (D) Workbooks.

544 (52) “School computer supply” means an item commonly
545 used by a student in a course of study in which a computer is
546 used. The term is mutually exclusive of the terms “school
547 supply”, “school art supply” and “school instructional
548 material” and may be taxed differently. The following is an
549 all-inclusive list:

550 (A) Computer storage media; diskettes, compact disks;

551 (B) Handheld electronic schedulers, except devices that
552 are cellular phones;

553 (C) Personal digital assistants, except devices that are
554 cellular phones;

555 (D) Computer printers; and

556 (E) Printer supplies for computers; printer paper, printer
557 ink.

558 (53) “School supply” means an item commonly used by
559 a student in a course of study. The term is mutually
560 exclusive of the terms “school art supply”, “school
561 instructional material” and “school computer supply” and
562 may be taxed differently. The following is an all-inclusive
563 list of school supplies:

564 (A) Binders;

565 (B) Book bags;

- 566 (C) Calculators;
- 567 (D) Cellophane tape;
- 568 (E) Blackboard chalk;
- 569 (F) Compasses;
- 570 (G) Composition books;
- 571 (H) Crayons;
- 572 (I) Erasers;
- 573 (J) Folders; expandable, pocket, plastic and manila;
- 574 (K) Glue, paste and paste sticks;
- 575 (L) Highlighters;
- 576 (M) Index cards;
- 577 (N) Index card boxes;
- 578 (O) Legal pads;
- 579 (P) Lunch boxes;
- 580 (Q) Markers;
- 581 (R) Notebooks;
- 582 (S) Paper; loose-leaf ruled notebook paper, copy paper,
583 graph paper, tracing paper, manila paper, colored paper,
584 poster board and construction paper;
- 585 (T) Pencil boxes and other school supply boxes;

586 (U) Pencil sharpeners;

587 (V) Pencils;

588 (W) Pens;

589 (X) Protractors;

590 (Y) Rulers;

591 (Z) Scissors; and

592 (AA) Writing tablets.

593 (54) "Seller" means any person making sales, leases or
594 rentals of personal property or services.

595 (55) "Service" or "selected service" includes all
596 nonprofessional activities engaged in for other persons for a
597 consideration which involve the rendering of a service as
598 distinguished from the sale of tangible personal property, but
599 does not include contracting, personal services, services
600 rendered by an employee to his or her employer, any service
601 rendered for resale or any service furnished by a business that
602 is subject to the control of the Public Service Commission
603 when the service or the manner in which it is delivered is
604 subject to regulation by the Public Service Commission of
605 this state. The term "service" or "selected service" does not
606 include payments received by a vendor of tangible personal
607 property as an incentive to sell a greater volume of such
608 tangible personal property under a manufacturer's,
609 distributor's or other third-party's marketing support program,
610 sales incentive program, cooperative advertising agreement
611 or similar type of program or agreement and these payments
612 are not considered to be payments for a "service" or "selected
613 service" rendered, even though the vendor may engage in
614 attendant or ancillary activities associated with the sales of

615 tangible personal property as required under the programs or
616 agreements.

617 (56) "Soft drink" means nonalcoholic beverages that
618 contain natural or artificial sweeteners. "Soft drinks" do not
619 include beverages that contain milk or milk products, soy,
620 rice or similar milk substitutes or greater than fifty percent of
621 vegetable or fruit juice by volume.

622 (57) "Sport or recreational equipment" means items
623 designed for human use and worn in conjunction with an
624 athletic or recreational activity that are not suitable for
625 general use. "Sport or recreational equipment" are mutually
626 exclusive of and may be taxed differently than apparel within
627 the definition of "clothing", "clothing accessories or
628 equipment" and "protective equipment". The following list
629 contains examples and is not intended to be an all-inclusive
630 list. "Sport or recreational equipment" shall include:

631 (A) Ballet and tap shoes;

632 (B) Cleated or spiked athletic shoes;

633 (C) Gloves, including, but not limited to, baseball,
634 bowling, boxing, hockey and golf;

635 (D) Goggles;

636 (E) Hand and elbow guards;

637 (F) Life preservers and vests;

638 (G) Mouth guards;

639 (H) Roller and ice skates;

640 (I) Shin guards;

641 (J) Shoulder pads;

642 (K) Ski boots;

643 (L) Waders; and

644 (M) Wetsuits and fins.

645 (58) "State" means any state of the United States, the
646 District of Columbia and the Commonwealth of Puerto Rico.

647 (59) "Tangible personal property" means personal
648 property that can be seen, weighed, measured, felt or touched
649 or that is in any manner perceptible to the senses. "Tangible
650 personal property" includes, but is not limited to, electricity,
651 steam, water, gas and prewritten computer software.

652 (60) "Tax" includes all taxes levied under articles fifteen
653 and fifteen-a of this chapter and additions to tax, interest and
654 penalties levied under article ten of this chapter.

655 (61) "Tax Commissioner" means the State Tax
656 Commissioner or his or her delegate. The term "delegate" in
657 the phrase "or his or her delegate", when used in reference to
658 the Tax Commissioner, means any officer or employee of the
659 State Tax Division duly authorized by the Tax Commissioner
660 directly, or indirectly by one or more redelegations of
661 authority, to perform the functions mentioned or described in
662 this article or rules promulgated for this article.

663 (62) "Taxpayer" means any person liable for the taxes
664 levied by articles fifteen and fifteen-a of this chapter or any
665 additions to tax penalties imposed by article ten of this
666 chapter.

667 (63) "Telecommunications service" or "telecommunication
668 service" when used in this article and articles fifteen and

669 fifteen-a shall have the same meaning as that term is defined
670 in section two-b of this article.

671 (64) "Tobacco" means cigarettes, cigars, chewing or pipe
672 tobacco or any other item that contains tobacco.

673 (65) "Use tax" means the tax levied under article fifteen-a
674 of this chapter.

675 (66) "Use-based exemption" means an exemption based
676 on a specified use of the product or service by the purchaser.

677 (67) "Vendor" means any person furnishing services
678 taxed by article fifteen or fifteen-a of this chapter or making
679 sales of tangible personal property or custom software.
680 "Vendor" and "seller" are used interchangeably in this article
681 and in articles fifteen and fifteen-a of this chapter.

682 (c) *Additional definitions.* -- Other terms used in this
683 article are defined in articles fifteen and fifteen-a of this
684 chapter, which definitions are incorporated by reference into
685 this article. Additionally, other sections of this article may
686 define terms primarily used in the section in which the term
687 is defined.

§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term "Streamlined Sales and Use Tax
3 Agreement" or "agreement" means the agreement adopted the
4 twelfth day of November, two thousand two, by states that
5 enacted authority to engage in multistate discussions similar
6 to that provided in section four of this article, except when
7 the context in which the term is used clearly indicates that a
8 different meaning is intended by the Legislature.
9 "Agreement" includes amendments to the agreement adopted
10 by the implementing states in calendar years two thousand

11 three, two thousand four, two thousand five and amendments
12 adopted by the governing board on or before the thirty-first
13 day of January, two thousand eight, but does not include any
14 substantive changes in the agreement adopted after the
15 thirty-first day of January, two thousand eight.

§11-15B-2b. Telecommunications definitions.

1 (a) *General.* -- When used in this article and articles
2 fifteen and fifteen-a of this chapter, words defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them in this section, except in those instances
5 where a different meaning is distinctly expressed or the
6 context in which the term is used clearly indicates that a
7 different meaning is intended by the Legislature.

8 (b) *Terms defined.* --

9 (1) "Telecommunications service" or "telecommunication
10 service" means the electronic transmission, conveyance or
11 routing of voice, data, audio, video or any other information
12 or signals to a point, or between or among points.

13 (A) The terms "telecommunications service" or
14 "telecommunication service" includes the transmission,
15 conveyance or routing in which computer processing
16 applications are used to act on the form, code or protocol of
17 the content for purposes of transmission, conveyance or
18 routing without regard to whether the service is referred to as
19 voice over internet protocol services or is classified by the
20 Federal Communications Commission as enhanced or value
21 added.

22 (B) "Telecommunications service" or "telecommunication
23 service" does not include:

24 (i) Advertising, including, but not limited to, directory
25 advertising;

26 (ii) "Ancillary services";

27 (iii) Billing and collection services provided to third
28 parties;

29 (iv) Data processing and information services that allow
30 data to be generated, acquired, stored, processed or retrieved
31 and delivered by an electronic transmission to a purchaser
32 where the purchaser's primary purpose for the underlying
33 transaction is the processed data or information;

34 (v) Digital products "delivered electronically", including,
35 but not limited to, software, music, video, reading materials
36 or ring tones;

37 (vi) Installation or maintenance of wiring or equipment
38 on a customer's premises;

39 (vii) Internet access service;

40 (viii) Radio and television audio and video programming
41 services, regardless of the medium, including the furnishing
42 of transmission, conveyance and routing of services by the
43 programming service provider. Radio and television audio
44 and video programming services shall include, but not be
45 limited to, cable service as defined in 47 U. S. C. 522(6) and
46 audio and video programming services delivered by
47 commercial mobile radio service providers, as defined in 47
48 CFR 20.3; or

49 (ix) Tangible personal property.

50 (2) *Related or ancillary terms.*--

51 The following terms are either used in subsection (a) of
52 this section or are commonly associated with terms used in
53 that subsection.

54 (A) "800 service" means a "telecommunications service"
55 that allows a caller to dial a toll-free number without
56 incurring a charge for the call. The service is typically
57 marketed under the name "800", "855", "866", "877" and
58 "888" toll-free calling and any subsequent numbers
59 designated by the Federal Communications Commission.

60 (B) "900 service" means an inbound toll
61 "telecommunications service" purchased by a subscriber that
62 allows the subscriber's customers to call in to the subscriber's
63 prerecorded announcement or live service. "900 service"
64 does not include the charge for collection services provided
65 by the seller of the "telecommunications services" to the
66 subscriber or service or product sold by the subscriber to the
67 subscriber's customer. The service is typically marketed
68 under the name "900 service" and any subsequent numbers
69 designated by the Federal Communications Commission.

70 (C) "Coin-operated telephone service" means a
71 "telecommunications service" paid for by inserting money
72 into a telephone accepting direct deposits of money to
73 operate.

74 (D) "Conference-bridging service" means an "ancillary
75 service" that links two or more participants of an audio or
76 video conference call and may include the provision of a
77 telephone number. "Conference-bridging service" does not
78 include the "telecommunications services" used to reach the
79 conference bridge.

80 (E) "Detailed telecommunications billing service" means
81 an "ancillary service" of separately stating information
82 pertaining to individual calls on a customer's billing
83 statement.

84 (F) "Directory assistance" means an "ancillary service" of
85 providing telephone number information and/or address
86 information.

87 (G) "Fixed wireless service" means a "telecommunications
88 service" that provides radio communication between fixed
89 points.

90 (H) "International" means a "telecommunications
91 service" that originates or terminates in the United States and
92 terminates or originates outside the United States,
93 respectively. United States includes the District of Columbia
94 or a United States territory or possession.

95 (I) "Interstate" means a "telecommunications service"
96 that originates in one United States state, territory or
97 possession and terminates in a different United States state,
98 territory or possession.

99 (J) "Intrastate" means a "telecommunications service"
100 that originates in one United States state, territory or
101 possession and terminates in the same United States state,
102 territory or possession.

103 (K) "Mobile wireless service" means a "telecommunications
104 service" that is transmitted, conveyed or routed regardless of the
105 technology used, whereby the origination and/or termination
106 points of the transmission, conveyance or routing are not
107 fixed, including, by way of example only,
108 "telecommunications services" that are provided by a
109 commercial mobile radio service provider.

110 (L) "Paging service" means a "telecommunications
111 service" that provides transmission of coded radio signals for
112 the purpose of activating specific pagers and may include
113 messages and/or sounds.

114 (M) "Pay telephone service" means a "telecommunications
115 service" provided through any pay telephone.

116 (N) "Residential telecommunications service" means a
117 "telecommunications service" or "ancillary services"
118 provided to an individual for personal use at a residential
119 address, including an individual dwelling unit such as an
120 apartment. In the case of institutions where individuals reside,
121 such as schools or nursing homes, "telecommunications service"
122 is considered residential if it is provided to and paid for by an
123 individual resident rather than the institution.

124 (O) "Value-added nonvoice data service" means a service
125 that otherwise meets the definition of "telecommunications
126 services" in which computer processing applications are used
127 to act on the form, content, code or protocol of the
128 information or data primarily for a purpose other than
129 transmission, conveyance or routing.

130 (P) "Vertical service" means an "ancillary service" that is
131 offered in connection with one or more "telecommunications
132 services" which offers advanced calling features that allow
133 customers to identify callers and to manage multiple calls and
134 call connections, including "conference-bridging services".

135 (Q) "Voice mail service" means an "ancillary service"
136 that enables the customer to store, send or receive recorded
137 messages. "Voice mail service" does not include any
138 "vertical services" that the customer may be required to have
139 in order to utilize the "voice mail service".

140 (c) *Effective date.* -- This section enacted in the year two
141 thousand six shall apply to purchases made on or after the
142 first day of July, two thousand six.

§11-15B-10. Seller and third-party liability.

1 (a) (1) A certified service provider is the agent of a seller,
2 with whom the certified service provider has contracted, for

3 the collection and remittance of sales and use taxes. As the
4 seller's agent, the certified service provider is liable for sales
5 and use tax due the state on all sales transactions it processes
6 for the seller except as set out in this section.

7 (2) A seller that contracts with a certified service provider
8 is not liable to the state for sales or use tax due on
9 transactions processed by the certified service provider unless
10 the seller misrepresented the type of items it sells or
11 committed fraud. In the absence of probable cause to believe
12 that the seller has committed fraud or made a material
13 misrepresentation, the seller is not subject to audit on the
14 transactions processed by the certified service provider. A
15 seller is subject to audit for transactions not processed by the
16 certified service provider. The member states acting jointly
17 may perform a system check of the seller and review the
18 seller's procedures to determine if the certified service
19 provider's system is functioning properly and the extent to
20 which the seller's transactions are being processed by the
21 certified service provider.

22 (b) A person that provides a certified automated system
23 is responsible for the proper functioning of that system and
24 is liable to the state for underpayments of tax attributable to
25 errors in the functioning of the certified automated system.
26 A seller that uses a certified automated system remains
27 responsible and is liable to the state for reporting and
28 remitting tax.

29 (c) A seller that has a proprietary system for determining
30 the amount of tax due on transactions and has signed an
31 agreement establishing a performance standard for that
32 system is liable for the failure of the system to meet the
33 performance standard.

**§11-15B-11. Seller registration under Streamlined Sales and
Use Tax Agreement.**

1 (a) *General.* -- A seller that registers to collect West
2 Virginia sales and use taxes using the online sales and use tax
3 registration system established under the Streamlined Sales
4 and Use Tax Agreement is not required to also register under
5 article twelve of this chapter unless the seller has sufficient
6 presence in this state that provides at least the minimum
7 contacts necessary for a constitutionally sufficient nexus for
8 this state to require registration and payment of the
9 registration tax under article twelve of this chapter.

10 (b) *Registration by agent.* -- A person appointed by a
11 seller to represent the seller before the states that are
12 members of the Streamlined Sales and Use Tax Agreement
13 may register the seller under the agreement under uniform
14 procedures approved by the governing board. The
15 appointment of an agent shall be in writing and submitted to
16 this state if requested by the Tax Commissioner.

17 (c) *Cancellation of registration.* -- A seller may cancel
18 its registration under the system at any time under uniform
19 procedures adopted by the governing board. Cancellation
20 does not relieve the seller of its liability for remitting to the
21 state any taxes collected.

**§11-15B-12. Effect of seller registration and participation in
streamlined sales and use tax administration.**

1 (a) *Collection of tax.* -- By registering under the
2 Streamlined Sales and Use Tax Agreement, the seller agrees
3 to collect and remit sales and use taxes as levied under
4 articles fifteen and fifteen-a of this chapter for all taxable
5 sales into this state as well as for all other states participating
6 in the agreement. Subsequent withdrawal or revocation of a
7 member state does not relieve a seller of its responsibility to
8 remit taxes previously or subsequently collected on behalf of
9 the state.

10 (b) *Effect of registration.* -- If the state has withdrawn or
11 been expelled from the Streamlined Sales and Use Tax
12 Agreement, the Tax Commissioner may not use registration
13 with the central registration system and the collection of sales
14 and use taxes in the member states as a factor in determining
15 whether the seller has a nexus with the state for any tax at
16 any time.

§11-15B-14. General sourcing definitions.

1 (a) *Definition of receive or receipt.* -- For the purposes
2 of subsection (a), section fifteen of this article, the terms
3 "receive" and "receipt" mean:

4 (1) Taking possession of tangible personal property;

5 (2) Making first use of services; or

6 (3) Taking possession or making first use of computer
7 software or digital goods, whichever comes first.

8 (b) *Limitation.* -- The terms "receive" and "receipt" do
9 not include possession by a shipping company on behalf of
10 the purchaser.

§11-15B-14a. Application of general sourcing rules and exclusion from the rules.

1 (a) Sellers shall source the sale of a product in accordance
2 with section fifteen of this article. The provisions of said
3 section apply regardless of the characterization of the product
4 as tangible personal property, computer software or digital
5 goods or a service. The provisions of said section only apply
6 to determine a seller's obligation to pay or collect and remit
7 a sales or use tax with respect to the seller's sale of a product.
8 These provisions do not affect the obligation of a purchaser
9 or lessee to remit tax on the use of the product to the taxing
10 jurisdiction of that use.

11 (b) Section fifteen of this article does not apply to sales
12 or use tax levied on telecommunication services as defined in
13 section two-b of this article. Telecommunication services
14 shall be sourced in accordance with section nineteen of this
15 article.

§11-15B-15. General transaction sourcing rules.

1 (a) *General rule.* -- For purposes of articles fifteen and
2 fifteen-a of this chapter, the retail sale, excluding lease or
3 rental, of a product shall be sourced as follows:

4 (1) When the product is received by the purchaser at a
5 business location of the seller, the sale is sourced to that
6 business location.

7 (2) When the product is not received by the purchaser at
8 a business location of the seller, the sale is sourced to the
9 location where receipt by the purchaser or the purchaser's
10 designated donee occurs, including the location indicated by
11 instructions for delivery to the purchaser or donee, known to
12 the seller.

13 (3) When subdivisions (1) and (2) of this subsection do
14 not apply, the sale is sourced to the location indicated by an
15 address for the purchaser that is available from the business
16 records of the seller that are maintained in the ordinary
17 course of the seller's business when use of this address does
18 not constitute bad faith.

19 (4) When subdivisions (1), (2) and (3) of this subsection
20 do not apply, the sale is sourced to the location indicated by
21 an address for the purchaser obtained during the
22 consummation of the sale, including the address of a
23 purchaser's payment instrument, if no other address is
24 available, provided use of this address does not constitute bad
25 faith.

26 (5) When none of the previous subdivisions of this
27 subsection apply, including the circumstance in which the
28 seller is without sufficient information to apply the previous
29 rules, then the location will be determined by the address
30 from which tangible personal property or computer software
31 was shipped, from which the digital goods delivered
32 electronically was first available for transmission by the
33 seller or from which the service was provided: *Provided,*
34 That any location that merely provided the digital transfer of
35 the product sold is disregarded for these purposes.

36 (b) *Lease or rental.* — The lease or rental of tangible
37 personal property or custom software, other than property
38 identified in subsection (c) or (d) of this section, shall be
39 sourced as follows:

40 (1) For a lease or rental that requires recurring periodic
41 payments, the first periodic payment is sourced the same as
42 a retail sale in accordance with the provisions of subsection
43 (a) of this section. Periodic payments made subsequent to the
44 first payment are sourced to the primary property location for
45 each period covered by the payment. The primary property
46 location is as indicated by an address for the property
47 provided by the lessee that is available to the lessor from its
48 records maintained in the ordinary course of business, when
49 use of this address does not constitute bad faith. The
50 property location may not be altered by intermittent use at
51 different locations, such as use of business property that
52 accompanies employees on business trips and service calls.

53 (2) For a lease or rental that does not require recurring
54 periodic payments, the payment is sourced the same as a
55 retail sale in accordance with the provisions of subsection (a)
56 of this section.

57 (3) This subsection does not affect the imposition or
58 computation of sales or use tax on leases or rentals based on

59 a lump sum or accelerated basis or on the acquisition of
60 property for lease.

61 (c) *Vehicles*. -- The lease or rental of motor vehicles,
62 trailers, semitrailers or aircraft that do not qualify as
63 transportation equipment, as defined in subsection (d) of this
64 section, shall be sourced as follows:

65 (1) For a lease or rental that requires recurring periodic
66 payments, each periodic payment is sourced to the primary
67 property location. The primary property location is indicated
68 by an address for the property provided by the lessee that is
69 available to the lessor from its records maintained in the
70 ordinary course of business, when use of this address does
71 not constitute bad faith. This location shall not be altered by
72 intermittent use at different locations.

73 (2) For a lease or rental that does not require recurring
74 periodic payments, the payment is sourced the same as a
75 retail sale in accordance with the provisions of subsection (a)
76 of this section.

77 (3) This subsection does not affect the imposition or
78 computation of sales or use tax on leases or rentals based on
79 a lump sum or accelerated basis or on the acquisition of
80 property for lease.

81 (d) *Sale or lease or rental of transportation equipment*.
82 -- The retail sale, including lease or rental, of transportation
83 equipment is sourced the same as a retail sale in accordance
84 with the provisions of subsection (a) of this section,
85 notwithstanding the exclusion of lease or rental in said
86 subsection. "Transportation equipment" means any of the
87 following:

88 (1) Locomotives and railcars that are utilized for the
89 carriage of persons or property in interstate commerce.

90 (2) Trucks and truck-tractors with a gross vehicle weight
91 rating of ten thousand pounds or greater, trailers, semitrailers
92 or passenger buses that are:

93 (A) Registered through the international registration plan;
94 and

95 (B) Operated under authority of a carrier authorized and
96 certificated by the United States Department of
97 Transportation or another federal authority to engage in the
98 carriage of persons or property in interstate commerce.

99 (3) Aircraft that are operated by air carriers authorized
100 and certificated by the United States Department of
101 Transportation or another federal or foreign authority to
102 engage in the carriage of persons or property in interstate or
103 foreign commerce.

104 (4) Containers designed for use on and component parts
105 attached or secured on the items set forth in subdivisions (1)
106 through (3), inclusive, of this subsection.

107 (e) *Exceptions.* -- Subsections (a) and (b) of this section
108 shall not apply to the following goods or services:

109 (1) Telecommunications services, ancillary services and
110 internet access services, as set out in section twenty of this
111 article, shall be sourced in accordance with section nineteen
112 of this article; and

113 (2) Until the first day of January, two thousand ten, a
114 seller who is primarily engaged in the retail sale of cut
115 flowers and flower arrangements taking the original order to
116 sell tangible personal property shall source the sale to the
117 place where order was taken. For purposes of this exception,
118 "primarily" means more than fifty percent of the seller's total
119 gross sales or receipts are derived from that activity. In

120 determining if a seller is primarily a florist, the total sales
121 price of cut flowers and floral arrangements includes
122 separately stated delivery or service charges. After the
123 thirty-first day of December, two thousand nine, sales by
124 florists shall be subject to the general sourcing rules stated in
125 subsection (a) of this section.

126 (f) *Product defined.* -- As used in subsection (a) of this
127 section, "product" includes tangible personal property,
128 computer software or digital goods or a service, or any
129 combination thereof.

§11-15B-18. Relief from certain liability for purchasers.

1 (a) A purchaser is relieved from liability for penalty to
2 this state and local jurisdictions of this state for having failed
3 to pay the correct amount of sales or use tax in the following
4 circumstances:

5 (1) A purchaser's seller or certified service provider
6 relied on erroneous data provided by this state on tax rates,
7 boundaries, taxing jurisdiction assignments or in the
8 taxability matrix completed by this state pursuant to Section
9 328 of the Streamlined Sales and Use Tax Agreement;

10 (2) A purchaser holding a direct pay permit relied on
11 erroneous data provided by this state on tax rates, boundaries,
12 taxing jurisdiction assignments or in the taxability matrix
13 completed by this state pursuant to Section 328 of the
14 Streamlined Sales and Use Tax Agreement;

15 (3) A purchaser relied on erroneous data provided by this
16 state in the taxability matrix completed by this state pursuant
17 to Section 328 of the Streamlined Sales and Use Tax
18 Agreement; or

19 (4) A purchaser using databases pursuant to subdivisions
20 (3), (4) and (5), subsection (d), section thirty-five of this

21 article relied on erroneous data provided by this state on tax
22 rates, boundaries or taxing jurisdiction assignments. After
23 providing adequate notice as determined by the governing
24 board, this state, having provided an address-based database
25 for assigning taxing jurisdictions pursuant to subdivisions (4)
26 and (5), subsection (d), section thirty-five of this article, shall
27 cease providing liability relief for errors resulting from the
28 reliance on the database provided by this state under the
29 provisions of subdivision (3), subsection (d), section
30 thirty-five of this article.

31 (b) A purchaser is relieved from liability for tax and
32 interest to this state and its local jurisdictions for having
33 failed to pay the correct amount of sales or use tax in the
34 circumstances described in subsection (a) of this section,
35 provided that, with respect to reliance on the taxability matrix
36 completed by this state pursuant to Section 328 of the
37 Streamlined Sales and Use Tax Agreement, relief is limited
38 to the state's erroneous classification in the taxability matrix
39 of terms included in the Streamlined Sales and Use Tax
40 Agreement library of definitions as "taxable" or "exempt",
41 "included in sales price" or "excluded from sales price" or
42 "included in the definition" or "excluded from the
43 definition".

44 (c) For purposes of this section, the term "penalty" means
45 an amount imposed for noncompliance that is not fraudulent,
46 willful or intentional which is in addition to the correct
47 amount of sales or use tax and interest.

§11-15B-19. Telecommunications and related services sourcing rule.

1 (a) Except for the defined telecommunication services in
2 subsection (c) of this section, the sale of telecommunication
3 service sold on a call-by-call basis shall be sourced to: (1)
4 Each level of taxing jurisdiction where the call originates and

5 terminates in that jurisdiction; or (2) each level of taxing
6 jurisdiction where the call either originates or terminates and
7 in which the service address is also located.

8 (b) Except for the defined telecommunication services in
9 subsection (c) of this section, a sale of telecommunication
10 service sold on a basis other than a call-by-call basis is
11 sourced to the customer's place of primary use.

12 (c) The sale of the following telecommunication services
13 shall be sourced to each level of taxing jurisdiction as
14 follows:

15 (1) A sale of mobile telecommunication service, other
16 than air-to-ground radiotelephone service and prepaid calling
17 service, is sourced to the customer's place of primary use, as
18 required by the Mobile Telecommunications Sourcing Act.

19 (2) A sale of post-paid calling service is sourced to the
20 origination point of the telecommunications signal as first
21 identified by either: The seller's telecommunications system,
22 or information received by the seller from its service
23 provider, where the system used to transport the signal is not
24 that of the seller.

25 (3) A sale of prepaid calling service or a sale of a prepaid
26 wireless calling service is sourced in accordance with section
27 fifteen of this article: *Provided*, That in the case of a sale of
28 a prepaid wireless calling service, the rule provided in
29 subdivision (5), subsection (a), section fifteen of this article
30 shall include, as an option, the location associated with the
31 mobile telephone number.

32 (4) A sale of a private communication service is sourced
33 as follows:

34 (A) Service for a separate charge related to a customer
35 channel termination point is sourced to each level of

36 jurisdiction in which the customer channel termination point
37 is located.

38 (B) Service where all customer termination points are
39 located entirely within one jurisdiction or levels of
40 jurisdiction is sourced in the jurisdiction in which the
41 customer channel termination points are located.

42 (C) Service for segments of a channel between two
43 customer channel termination points located in different
44 jurisdictions and which segment of channel are separately
45 charged is sourced fifty percent in each level of jurisdiction
46 in which the customer channel termination points are located.

47 (D) Service for segments of a channel located in more
48 than one jurisdiction or levels of jurisdiction and which
49 segments are not separately billed is sourced in each
50 jurisdiction based on the percentage determined by dividing
51 the number of customer channel termination points in the
52 jurisdiction by the total number of customer channel
53 termination points.

54 (E) The sale of internet access service is sourced to the
55 customer's place of primary use.

56 (F) The sale of an ancillary service is sourced to the
57 customer's place of primary use.

§11-15B-20. Telecommunication sourcing definitions.

1 For the purpose of this article, including section nineteen
2 of this article, the following definitions apply:

3 (1) "Air-to-ground radiotelephone service" means a radio
4 service, as that term is defined in 47 CFR 22.99, in which
5 common carriers are authorized to offer and provide radio
6 telecommunications service for hire to subscribers in aircraft.

7 (2) "Ancillary services" means services that are
8 associated with or incidental to the provision of
9 "telecommunications services", including, but not limited to,
10 "detailed telecommunications billing", "directory assistance",
11 "vertical service" and "voice mail services".

12 (3) "Call-by-call basis" means any method of charging
13 for telecommunications services where the price is measured
14 by individual calls.

15 (4) "Communications channel" means a physical or
16 virtual path of communications over which signals are
17 transmitted between or among customer channel termination
18 points.

19 (5) "Customer" means the person or entity that contracts
20 with the seller of telecommunications services. If the end
21 user of telecommunications services is not the contracting
22 party, the end user of the telecommunications service is the
23 customer of the telecommunication service, but this sentence
24 only applies for the purpose of sourcing sales of
25 telecommunications services under section nineteen of this
26 article. "Customer" does not include a reseller of
27 telecommunications service or for mobile telecommunications
28 service of a serving carrier under an agreement to serve the
29 customer outside the home service provider's licensed service
30 area.

31 (6) "Customer channel termination point" means the
32 location where the customer either inputs or receives the
33 communications.

34 (7) "End user" means the person who utilizes the
35 telecommunication service. In the case of an entity, "end
36 user" means the individual who utilizes the service on behalf
37 of the entity.

38 (8) "Home service provider" means the same as that term
39 is defined in Section 124(5) of Public Law 106-252 (Mobile
40 Telecommunications Sourcing Act).

41 (9) "Mobile telecommunications service" means the same
42 as that term is defined in Section 124 (7) of Public Law
43 106-252 (Mobile Telecommunications Sourcing Act).

44 (10) "Place of primary use" means the street address
45 representative where the customer's use of the
46 telecommunication service primarily occurs, which must be
47 the residential street address or the primary business street
48 address of the customer. In the case of mobile
49 telecommunications services, "place of primary use" must be
50 within the licensed service area of the home service provider.

51 (11) "Post-paid calling service" means the
52 telecommunication service obtained by making a payment on
53 a call-by-call basis either through the use of a credit card or
54 payment mechanism such as a bank card, travel card, credit
55 card or debit card or by charge made to a telephone number
56 which is not associated with the origination or termination of
57 the telecommunication service. A post-paid calling service
58 includes a telecommunication service, except a prepaid
59 wireless calling service, that would be a prepaid calling
60 service except it is not exclusively a telecommunication
61 service.

62 (12) "Prepaid calling service" means the right to access
63 exclusively telecommunications services, which must be paid
64 for in advance and which enables the origination of calls
65 using an access number or authorization code, whether
66 manually or electronically dialed, and that is sold in
67 predetermined units or dollars of which the number declines
68 with use in a known amount.

69 (13) "Prepaid wireless calling service" means a
70 telecommunications service that provides the right to utilize

71 mobile wireless service as well as other nontelecommunications
72 services, including the download of digital products delivered
73 electronically, content and ancillary services, which must be
74 paid for in advance that is sold in predetermined units or dollars
75 of which the number declines with use in a known amount.

76 (14) "Private communication service" means a
77 telecommunication service that entitles the customer to
78 exclusive or priority use of a communications channel or
79 group of channels between or among termination points,
80 regardless of the manner in which the channel or channels are
81 connected, and includes switching capacity, extension lines,
82 stations and any other associated services that are provided
83 in connection with the use of the channel or channels.

84 (15) "Service address" means:

85 (A) The location of the telecommunications equipment to
86 which a customer's call is charged and from which the call
87 originates or terminates, regardless of where the call is billed
88 or paid;

89 (B) If the location in paragraph (A) of this subdivision is
90 not known, service address means the origination point of the
91 signal of the telecommunications services first identified by
92 either the seller's telecommunications system or in
93 information received by the seller from its service provider,
94 where the system used to transport the signals is not that of
95 the seller; or

96 (C) If the location in paragraphs (A) and (B) of this
97 subdivision are not known, then "service address" means the
98 location of the customer's place of primary use.

§11-15B-24. Administration of exemptions.

1 (a) *General rules.* -- When a purchaser claims an
2 exemption from paying tax under article fifteen or fifteen-a
3 of this chapter:

4 (1) Sellers shall obtain identifying information of the
5 purchaser and the reason for claiming a tax exemption at the
6 time of the purchase, as determined by the governing board.

7 (2) A purchaser is not required to provide a signature to
8 claim an exemption from tax unless a paper exemption
9 certificate is used.

10 (3) The seller shall use the standard form for claiming an
11 exemption electronically that is adopted by the governing
12 board.

13 (4) The seller shall obtain the same information for proof
14 of a claimed exemption regardless of the medium in which
15 the transaction occurred.

16 (5) The Tax Commissioner may utilize a system wherein
17 the purchaser exempt from the payment of the tax is issued
18 an identification number that is presented to the seller at the
19 time of the sale.

20 (6) The seller shall maintain proper records of exempt
21 transactions and provide the records to the Tax
22 Commissioner or the Tax Commissioner's designee.

23 (7) The Tax Commissioner shall administer use-based
24 and entity-based exemptions when practicable through a
25 direct pay permit, an exemption certificate or another means
26 that does not burden sellers.

27 (8) After the thirty-first day of December, two thousand
28 seven, in the case of drop shipments, a third-party vendor
29 such as a drop shipper may claim a resale exemption based

30 on an exemption certificate provided by its customer/reseller
31 or any other acceptable information available to the
32 third-party vendor evidencing qualification for a resale
33 exemption, regardless of whether the customer/reseller is
34 registered to collect and remit sales and use taxes in this state,
35 when the sale is sourced to this state.

36 (b) The Tax Commissioner shall relieve sellers that
37 follow the requirements of this section from any tax
38 otherwise applicable if it is determined that the purchaser
39 improperly claimed an exemption and shall hold the
40 purchaser liable for the nonpayment of tax. This relief from
41 liability does not apply:

42 (A) To a seller who fraudulently fails to collect the tax;

43 (B) To a seller who solicits purchasers to participate in
44 the unlawful claim of an exemption;

45 (C) To a seller who accepts an exemption certificate
46 when the purchaser claims an entity-based exemption when:
47 (i) The subject of the transaction sought to be covered by the
48 exemption certificate is actually received by the purchaser at
49 a location operated by the seller; and (ii) the state in which
50 that location resides provides an exemption certificate that
51 clearly and affirmatively indicates (graying out exemption
52 reason types on uniform form and posting it on a state's
53 website is an indicator) that the claimed exemption is not
54 available in that state.

55 (c) *Time within which seller must obtain exemption*
56 *certificates.* -- A seller is relieved from paying tax otherwise
57 applicable under article fifteen or fifteen-a of this chapter if
58 the seller obtains a fully completed exemption certificate or
59 captures the required data elements within ninety days
60 subsequent to the date of sale.

61 (1) If the seller has not obtained an exemption certificate
62 or all required data elements, the seller may, within one
63 hundred twenty days subsequent to a request for
64 substantiation by the Tax Commissioner, either prove that the
65 transaction was not subject to tax by other means or obtain a
66 fully completed exemption certificate from the purchaser,
67 taken in good faith. For purposes of this section, the Tax
68 Commissioner may continue to apply this state's standards of
69 good faith until a uniform standard for good faith is defined
70 in the Streamlined Sales and Use Tax Agreement.

71 (2) Nothing in this section shall affect the ability of the
72 Tax Commissioner to require purchasers to update exemption
73 certificate information or to reapply with the state to claim
74 certain exemptions.

75 (3) Notwithstanding the preceding provisions of this
76 section, when an exemption may be claimed by exemption
77 certificate, a seller is relieved from paying the tax otherwise
78 applicable if the seller obtains a blanket exemption certificate
79 from a purchaser with which the seller has a recurring
80 business relationship. The Tax Commissioner may not
81 request from the seller renewal of blanket certificates or
82 updates of exemption certificate information or data elements
83 when there is a recurring business relationship between the
84 buyer and seller. For purposes of this subdivision, a
85 recurring business relationship exists when a period of no
86 more than twelve months elapses between sales transactions.

87 (d) *Exception.* - No exemption certificate or direct pay
88 permit number is required when the sale is exempt per se
89 from the taxes imposed by articles fifteen and fifteen-a of this
90 chapter.

§11-15B-25. Uniform tax returns.

1 (a) *General.* -- A seller who registers with this state is
2 required to file one sales/use tax return with the Tax
3 Commissioner for each taxing period.

4 (b) *Due date of return.* -- This return shall be due on the
5 twentieth day of the month following the month in which the
6 transaction subject to tax occurred.

7 (c) *Additional information returns.* -- The Tax
8 Commissioner shall allow any Model I, Model II or Model
9 III seller to submit its sales and use tax returns in a simplified
10 format that does not include more data fields than permitted
11 by the governing board. The Tax Commissioner may require
12 additional informational returns to be submitted not more
13 frequently than every six months under a staggered system
14 developed by the governing board.

15 (d) The Tax Commissioner shall allow any seller that is
16 registered with this state under the Streamlined Sales and Use
17 Tax Agreement which does not have a legal requirement to
18 register in this state under article twelve of this chapter and
19 is not a Model I, II or III seller to submit its sales and use tax
20 returns as follows:

21 (1) Upon registration, the Tax Commissioner shall
22 provide to the seller the returns required by this state.

23 (2) The Tax Commissioner may require a seller to file a
24 return anytime within one year of the month of initial
25 registration and future returns may be required on an annual
26 basis in succeeding years.

27 (3) In addition to the returns required in subdivision (2)
28 of this subsection, a seller shall submit a return by the
29 twentieth day of the month following any month in which the
30 seller accumulated state and local tax funds for the state in
31 the amount of one thousand dollars or more.

32 (4) The Tax Commissioner shall participate with other
33 states that are members of the Streamlined Sales and Use Tax
34 Agreement in developing a more uniform sales and use tax
35 return that, when completed, is available to all sellers.

36 (5) All Model I, II and III sellers shall file returns
37 electronically after the first day of January, two thousand
38 four.

§11-15B-26. Uniform rules for remittances of funds.

1 (a) *General.* -- Only one remittance is required for each
2 return except as provided in this section.

3 (b) *When electronic remittance required.* -- All
4 remittances from sellers under Models I, II and III shall be
5 remitted electronically after the thirty-first day of December,
6 two thousand three.

7 (c) *Method of remittance.* -- Electronic payments shall be
8 made using either the ACH credit or ACH debit method.

9 (d) *Alternative method.* -- The Tax Commissioner shall
10 provide by rule, which may be an existing rule, an alternative
11 method for making "same day" payments if an electronic
12 funds transfer fails.

13 (e) *Format of data accompany remittance.* -- Any data
14 that accompanies a remittance shall be formatted using
15 uniform tax type and payment type codes approved by the
16 governing board.

§11-15B-27. Uniform rules for recovery of bad debt.

1 (a) *General.* -- A deduction from taxable sales is allowed
2 for bad debts. Any deduction taken that is attributed to bad
3 debts may not include interest or any amount upon which the
4 sales or use tax imposed by this state was not previously
5 paid.

6 (b) *"Bad debt" defined.* -- The term "bad debt" has the
7 same meaning as when used in the federal definition of "bad

8 debt" in 26 U. S. C. §166 as the basis for calculating bad debt
9 recovery. However, the amount calculated pursuant to 26 U.
10 S. C. §166 is adjusted to exclude:

11 (1) Financing charges or interest;

12 (2) Sales or use taxes charged on the purchase price;

13 (3) Uncollectible amounts on property that remain in the
14 possession of the seller until the full purchase price is paid;

15 (4) Expenses incurred in attempting to collect any debt;
16 or

17 (5) Repossessed property.

18 (c) *When deduction may be taken.* -- Bad debts may be
19 deducted on the return for the period during which the bad
20 debt is written off as uncollectible in the claimant's books and
21 records and is eligible to be deducted for federal income tax
22 purposes. For purposes of this section, a claimant who is not
23 required to file federal income tax returns may deduct a bad
24 debt on a return filed for the period in which the bad debt is
25 written off as uncollectible in the claimant's books and
26 records and would be eligible for a bad debt deduction for
27 federal income tax purposes if the claimant was required to
28 file a federal income tax return.

29 (d) *Subsequent recovery.* -- If a deduction is taken for a
30 bad debt and the debt is subsequently collected, in whole or
31 in part, the tax on the amount collected shall be paid and
32 reported on the return filed for the period in which the
33 collection is made.

34 (e) *When bad debt deduction exceeds taxable sales.* --
35 When the amount of bad debt exceeds the amount of taxable
36 sales for the period during which the bad debt is written off,

37 a refund claim may be filed within the period specified in
38 section fourteen, article ten of this chapter, for filing a claim
39 for refund of sales or use tax, except that the statute of
40 limitations shall be measured from the due date of the return
41 on which the bad debt could first be claimed.

42 (f) *When certified service provider is used.* -- Where
43 filing responsibilities of the seller have been assumed by a
44 certified service provider, the certified service provider may
45 claim, on behalf of the seller, any bad debt allowance
46 provided by this section. The certified service provider shall
47 credit or refund to the seller the full amount of any bad debt
48 allowance or refund received under this section.

49 (g) *Reporting of payment received on previously claimed*
50 *bad debt.* -- For the purposes of reporting a payment
51 received on a previously claimed bad debt, any payments
52 made on a debt or account are applied first proportionally to
53 the taxable price of the property or service and the sales tax
54 thereon, and secondly to interest, service charges, and any
55 other charges.

56 (h) *Allocation.* -- In situations where the books and
57 records of the party claiming the bad debt allowance support
58 an allocation of the bad debts among two or more states that
59 are members of the Streamlined Sales and Use Tax
60 Agreement, the allocation is permitted.

**§11-15B-28. Confidentiality and privacy protections under
Model I.**

1 (a) *Purpose.* -- The purpose of this section is to set forth
2 the policy of this state for the protection of the confidentiality
3 rights of all participants in the streamlined sales and use tax
4 administration and collection system and of the privacy
5 interests of consumers who deal with Model I sellers.

6 (b) *Certain terms defined.* -- As used in this section:

7 (1) The term "confidential taxpayer information" means
8 all information that is protected under section five-d, article
9 ten of this chapter;

10 (2) The term "personally identifiable information" means
11 information that identifies a person; and

12 (3) The term "anonymous data" means information that
13 does not identify a person.

14 (c) *Certified service providers.* -- With very limited
15 exceptions, a certified service provider shall perform its tax
16 calculation, remittance and reporting functions without
17 retaining the personally identifiable information of
18 consumers.

19 (d) *Certification of service providers.* -- The governing
20 board may certify a service provider only if that certified
21 service provider certifies that:

22 (1) Its system has been designed and tested to ensure that
23 the fundamental precept of anonymity is respected;

24 (2) That personally identifiable information is only used
25 and retained to the extent necessary for the administration of
26 Model I with respect to exempt purchasers;

27 (3) It provides consumers clear and conspicuous notice of
28 its information practices, including what information it
29 collects, how it collects the information, how it uses the
30 information, how long, if at all, it retains the information and
31 whether it discloses the information to member states. This
32 notice is satisfied by a written privacy policy statement
33 accessible by the public on the official website of the
34 certified service provider;

35 (4) Its collection, use and retention of personally
36 identifiable information is limited to that required by the
37 states that are members of the Streamlined Sales and Use Tax
38 Agreement to ensure the validity of exemptions from taxation
39 that are claimed by reason of a consumer's status or the
40 intended use of the goods or services purchased; and

41 (5) It provides adequate technical, physical and
42 administrative safeguards as to protect personally identifiable
43 information from unauthorized access and disclosure.

44 (e) *State notification of privacy policy.* -- The Tax
45 Commissioner shall provide public notification to consumers,
46 including their exempt purchasers, of this state's practices
47 relating to the collection, use and retention of personally
48 identifiable information.

49 (f) *Destruction of confidential information.* -- When any
50 personally identifiable information that has been collected
51 and retained by the Tax Commissioner is no longer required
52 for the purposes set forth in subdivision (4), subsection (d) of
53 this section, the information shall no longer be retained by
54 the Tax Commissioner.

55 (g) *Review and correction by individuals.* -- When
56 personally identifiable information regarding an individual is
57 retained by or on behalf of the Tax Commissioner, the
58 commissioner shall provide reasonable access by an
59 individual to his or her own information in the
60 commissioner's possession and a right to correct any
61 inaccurately recorded information.

62 (h) *Discovery by other persons.* -- If anyone other than the
63 individual, or a person authorized in writing by the individual,
64 or by controlling law seeks to discover personally identifiable
65 information, the Tax Commissioner shall make a reasonable
66 and timely effort to notify the individual of the request.

67 (i) *Enforcement.* -- This privacy policy shall be enforced
68 by the Tax Commissioner or the Attorney General of this
69 state.

70 (j) This section shall not be interpreted as limiting or
71 abrogating any other statutory or regulatory provision of this
72 state regarding the collection, use and maintenance of
73 confidential taxpayer information, which provisions remain
74 fully applicable and binding. This section and the
75 Streamlined Sales and Use Tax Agreement do not enlarge or
76 limit the authority of this state to:

77 (1) Conduct audits or other reviews as provided under the
78 Streamlined Sales and Use Tax Agreement and state law;

79 (2) Provide records pursuant to the Freedom of
80 Information Act, disclosure laws with governmental agencies
81 or other laws or regulations;

82 (3) Prevent, consistent with state law, disclosures of
83 confidential taxpayer information;

84 (4) Prevent, consistent with federal law, disclosures or
85 misuse of federal return information obtained under a
86 disclosure agreement with the Internal Revenue Service; or

87 (5) Collect, disclose, disseminate or otherwise use
88 anonymous data for governmental purposes.

89 (k) *Service provider's confidentiality policy may be more*
90 *restrictive.* -- This privacy policy does not preclude the
91 governing board from certifying a certified service provider
92 whose privacy policy is more protective of confidential
93 taxpayer information or personally identifiable information
94 than is required by the agreement or the laws of this state.

**§11-15B-30. Monetary allowances for new technological models
for sales tax collection; delayed effective date.**

1 (a) *Monetary allowance under Model I.* --

2 (1) The Tax Commissioner shall provide a monetary
3 allowance to a certified service provider in Model I. This
4 allowance shall be in accordance with the terms of the
5 contract between the governing board of the Streamlined
6 Sales and Use Tax Agreement and the certified service
7 provider. The details of this monetary allowance shall be
8 developed and provided through the contract process. The
9 contract shall provide that the allowance be funded entirely
10 from money collected in Model I.

11 (2) The contract between the governing board and the
12 certified service provider may base the monetary allowance
13 to a certified service provider on one or more of the
14 following:

15 (A) A base rate that applies to taxable transactions
16 processed by the certified service provider; or

17 (B) For a period not to exceed twenty-four months
18 following a voluntary seller's registration through the
19 agreement's central registration process, a percentage of tax
20 revenue generated for a member state by the voluntary seller
21 for each member state for which the seller does not have a
22 requirement to register to collect the tax.

23 (b) *Monetary allowance for Model II sellers.* -- The
24 monetary allowance to sellers under Model II may be based
25 on the following:

26 (1) All sellers shall receive a base rate for a period not to
27 exceed twenty-four months following the commencement of
28 participation by a seller. The base rate is set by the
29 governing board of the Streamlined Sales and Use Tax
30 Agreement after the base rate has been established for Model

31 I certified service providers. This allowance is in addition to
32 any vendor or seller discount afforded by each member state
33 at the time.

34 (2) A voluntary Model II seller not otherwise required to
35 register with this state to collect the consumers sales and
36 service tax and use tax, that registers through the Streamlined
37 Sales and Use Tax Agreement's central registration process,
38 shall receive for a period not to exceed twenty-four months
39 following the voluntary seller's registration, the base rate
40 percentage of tax revenue generated for this state by the
41 voluntary seller.

42 (3) Following the conclusion of the 24-month period, a
43 seller will only be entitled to a vendor discount afforded
44 under each member state's law at the time the base rate
45 expires.

46 (c) Monetary allowance for Model III sellers and all other
47 sellers that are not under Model I or II.

48 A monetary allowance to sellers under Model III and to
49 all other sellers registered under the agreement that are not
50 sellers under Model I or II may be allowed based on the
51 following:

52 (1) For a period not to exceed twenty-four months
53 following a voluntary seller's registration through the
54 agreement's central registration process, a percentage of tax
55 revenue generated for a member state by the voluntary seller
56 for each member state for which the seller does not have a
57 requirement to register to collect the tax; and

58 (2) Vendor discounts afforded under each member state's
59 law.

60 (d) Prohibition on allowance or payment of monetary
61 allowances.

62 Notwithstanding subsections (a), (b) and (c) of this
63 section, the Tax Commissioner may not allow any vendor,
64 seller or certified service provider any monetary allowance,
65 discount or other compensation for collecting and remitting
66 the taxes levied by articles fifteen and fifteen-a of this
67 chapter, or for making and filing the periodic reports required
68 by this article, or articles fifteen and fifteen-a of this chapter,
69 until the cost of collection study required by the agreement is
70 completed and the monetary allowances are based on the
71 results of that study, or on requirements of federal law
72 requiring remote sellers to collect sales and use taxes for
73 states that have signed the agreement.

§11-15B-32. Effective date.

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year two thousand
3 three, shall take effect the first day of January, two thousand
4 four, and apply to all sales made on or after that date and to
5 all returns and payments due on or after that day, except as
6 otherwise expressly provided in section five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 two thousand three, shall take effect the first day of January,
10 two thousand four, and apply to all sales made on or after that
11 date.

12 (c) The provisions of this article, as amended or added by
13 Act of the Legislature in the year two thousand four, shall
14 apply to all sales made on or after the date of passage in the
15 year two thousand four.

16 (d) The provisions of this article, as amended or added
17 during the regular legislative session in the year two thousand
18 eight, shall apply to all sales made on or after the date of
19 passage and to all returns and payments due on or after that
20 day, except as otherwise expressly provided in this article.

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CHAPTER 219

**(H.B. 4016 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Amended and again passed March 16, 2008, as a result of the
objections of the Governor; in effect from passage.]
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United
- 3 States relating to income taxes, unless a different meaning is
- 4 clearly required. Any reference in this article to the laws of
- 5 the United States means the provisions of the Internal
- 6 Revenue Code of 1986, as amended, and any other provisions
- 7 of the laws of the United States that relate to the

8 determination of income for federal income tax purposes. All
9 amendments made to the laws of the United States after the
10 thirty-first day of December, two thousand six, but prior to
11 the fourteenth day of February, two thousand eight, shall be
12 given effect in determining the taxes imposed by this article
13 to the same extent those changes are allowed for federal
14 income tax purposes, whether the changes are retroactive or
15 prospective, but no amendment to the laws of the United
16 States made on or after the fourteenth day of February, two
17 thousand eight, shall be given any effect.

18 (b) *Medical savings accounts.* -- The term "taxable trust"
19 does not include a medical savings account established
20 pursuant to section twenty, article fifteen, chapter thirty-three
21 of this code or section fifteen, article sixteen of said chapter.
22 Employer contributions to a medical savings account
23 established pursuant to said sections are not "wages" for
24 purposes of withholding under section seventy-one of this
25 article.

26 (c) *Surtax.* -- The term "surtax" means the twenty percent
27 additional tax imposed on taxable withdrawals from a
28 medical savings account under section twenty, article fifteen,
29 chapter thirty-three of this code and the twenty percent
30 additional tax imposed on taxable withdrawals from a
31 medical savings account under section fifteen, article sixteen
32 of said chapter which are collected by the Tax Commissioner
33 as tax collected under this article.

34 (d) *Effective date.* -- The amendments to this section
35 enacted in the year two thousand eight are retroactive to the
36 extent allowable under federal income tax law. With respect
37 to taxable years that began prior to the first day of January,
38 two thousand nine, the law in effect for each of those years
39 shall be fully preserved as to that year, except as provided in
40 this section.

41 (e) For purposes of the refundable credit allowed to a low
42 income senior citizen for property tax paid on his or her
43 homestead in this state, the term "laws of the United States"
44 as used in subsection (a) of this section means and includes
45 the term "low income" as defined in subsection (b), section
46 twenty-one of this article and as reflected in the poverty
47 guidelines updated periodically in the federal register by the
48 U.S. Department of Health and Human Services under the
49 authority of 42 U.S.C. §9902(2).

CHAPTER 220

(Com. Sub. for S.B. 541 - By Senators Bowman and Kessler)

[Passed March 6, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to retroactively applying and extending the personal income tax adjustment to the gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee.

Be it enacted by the Legislature of West Virginia:

That §11-21-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

§11-21-12d. Additional modification reducing federal adjusted gross income.

1 In addition to amounts authorized to be subtracted from
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any person who retires under an
4 employer-provided defined benefit pension plan that
5 terminates prior to or after the retirement of that person and
6 the pension plan is covered by a guarantor whose maximum
7 benefit guarantee is less than the maximum benefit to which
8 the retiree was entitled had the plan not terminated may
9 subtract annually from his or her federal adjusted income a
10 sum equal to the difference in the amount of the maximum
11 annual pension benefit the person would have received for
12 such tax year had the plan not terminated and the maximum
13 annual pension benefit actually received from the guarantor
14 under a benefit guarantee plan: *Provided*, That if the Tax
15 Commissioner determines that this adjustment reduces the
16 revenues of the state by two million dollars or more in any
17 one year, then the Tax Commissioner shall reduce the
18 percentage of the reduction to a level at which the
19 commissioner believes will reduce the cost of the adjustment
20 to two million dollars for the next year. This tax adjustment
21 shall be effective for taxable years beginning on and after the
22 first day of January, two thousand eight: *Provided, however*,
23 That for the taxable year two thousand seven, the tax
24 adjustment shall be effective and shall apply retroactively:
25 *Provided further*, That the adjustment shall terminate for the
26 tax years on or after the first day of January, two thousand
27 twelve. This modification is available regardless of the type
28 of return form filed.

CHAPTER 221

**(H.B. 4017 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Amended and again passed March 16, 2008, as a result of the
objections of the Governor
[Approved by the Governor on March 31, 2008.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That § 11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United
- 3 States relating to federal income taxes, unless a different
- 4 meaning is clearly required by the context or by definition in
- 5 this article. Any reference in this article to the laws of the
- 6 United States means the provisions of the Internal Revenue
- 7 Code of 1986, as amended, and any other provisions of the
- 8 laws of the United States that relate to the determination of

9 income for federal income tax purposes. All amendments
10 made to the laws of the United States after the thirty-first day
11 of December, two thousand six, but prior to the fourteenth
12 day of February, two thousand eight, shall be given effect in
13 determining the taxes imposed by this article to the same
14 extent those changes are allowed for federal income tax
15 purposes, whether the changes are retroactive or prospective,
16 but no amendment to the laws of the United States made on
17 or after the fourteenth day of February, two thousand eight,
18 shall be given any effect.

19 (b) The term "Internal Revenue Code of 1986" means the
20 Internal Revenue Code of the United States enacted by the
21 federal Tax Reform Act of 1986 and includes the provisions
22 of law formerly known as the Internal Revenue Code of
23 1954, as amended, and in effect when the federal Tax Reform
24 Act of 1986 was enacted that were not amended or repealed
25 by the federal Tax Reform Act of 1986. Except when
26 inappropriate, any reference in any law, executive order or
27 other document:

28 (1) To the Internal Revenue Code of 1954 includes a
29 reference to the Internal Revenue Code of 1986; and

30 (2) To the Internal Revenue Code of 1986 includes a
31 reference to the provisions of law formerly known as the
32 Internal Revenue Code of 1954.

33 (c) *Effective date.* -- The amendments to this section
34 enacted in the year two thousand eight are retroactive to the
35 extent allowable under federal income tax law. With respect
36 to taxable years that began prior to the first day of January,
37 two thousand nine, the law in effect for each of those years
38 shall be fully preserved as to that year, except as provided in
39 this section.

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CHAPTER 222

**(Com. Sub. for H.B. 4420 - By Delegates White, Kominar
and Boggs)**

[Amended and again passed March 16, 2008, as a result of the
objections of the Governor; in effect January 1, 2009.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §11-24-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-24-4b, all relating generally to the manner in which the corporate net income tax is to be imposed on business entities; providing definitions of terms relating to insurance companies, unitary businesses and certain trusts and investment companies; and establishing the applicability of the tax upon real estate investment trusts, regulated investment companies, qualified real estate investment trusts and qualified regulated investment companies.

Be it enacted by the Legislature of West Virginia:

That §11-24-3a 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 §11-24-4b, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Special terms defined.

§11-24-4b. Regulated investment companies and real estate investment trusts subject to tax.

***§11-24-3a. Specific terms defined.**

1 For purposes of this article:

2 (1) *Business income.* -- The term “business income”
3 means income arising from transactions and activity in the
4 regular course of the taxpayer’s trade or business and
5 includes income from tangible and intangible property if the
6 acquisition, management and disposition of the property or
7 the rendering of services in connection therewith constitute
8 integral parts of the taxpayer’s regular trade or business
9 operations and includes all income which is apportionable
10 under the Constitution of the United States.

11 (2) “Combined group” means the group of all persons
12 whose income and apportionment factors are required to be
13 taken into account pursuant to subsection (a) or (b), section
14 thirteen-a of this article in determining the taxpayer’s share
15 of the net business income or loss apportionable to this state.

16 (3) *Commercial domicile.* -- The term “commercial
17 domicile” means the principal place from which the trade or
18 business of the taxpayer is directed or managed: *Provided,*
19 That the commercial domicile of a financial organization,
20 which is subject to regulation as such, shall be at the place
21 designated as its principal office with its regulating authority.

22 (4) *Compensation.* -- The term “compensation” means
23 wages, salaries, commissions and any other form of
24 remuneration paid to employees for personal services.

25 (5) *Corporation.* -- “Corporation” means any corporation
26 as defined by the laws of this state or organization of any
27 kind treated as a corporation for tax purposes under the laws

*CLERK’S NOTE: This section was also amended by SB 680 (Chapter 215),
which passed prior to this act.

28 of this state, wherever located, which if it were doing
29 business in this state would be subject to the tax imposed by
30 this article. The business conducted by a partnership which
31 is directly or indirectly held by a corporation shall be
32 considered the business of the corporation to the extent of the
33 corporation's distributive share of the partnership income,
34 inclusive of guaranteed payments to the extent prescribed by
35 regulation. The term "corporation" includes a joint-stock
36 company and any association or other organization which is
37 taxable as a corporation under the federal income tax law.

38 (6) *Delegate*. -- The term "delegate" in the phrase "or his
39 or her delegate", when used in reference to the Tax
40 Commissioner, means any officer or employee of the State
41 Tax Department duly authorized by the Tax Commissioner
42 directly, or indirectly by one or more redelegations of
43 authority, to perform the functions mentioned or described in
44 this article or regulations promulgated thereunder.

45 (7) *Domestic corporation*. -- The term "domestic
46 corporation" means any corporation organized under the laws
47 of West Virginia and certain corporations organized under
48 the laws of the State of Virginia before the twentieth day of
49 June, one thousand eight hundred sixty-three. Every other
50 corporation is a foreign corporation.

51 (8) *Engaging in business*. -- The term "engaging in
52 business" or "doing business" means any activity of a
53 corporation which enjoys the benefits and protection of
54 government and laws in this state.

55 (9) *Federal Form 1120*. -- The term "Federal Form 1120"
56 means the annual federal income tax return of any
57 corporation made pursuant to the United States Internal
58 Revenue Code of 1986, as amended, or in successor
59 provisions of the laws of the United States, in respect to the
60 federal taxable income of a corporation, and filed with the

61 federal Internal Revenue Service. In the case of a
62 corporation that elects to file a federal income tax return as
63 part of an affiliated group, but files as a separate corporation
64 under this article, then as to such corporation Federal Form
65 1120 means its pro forma Federal Form 1120.

66 (10) *Fiduciary*. -- The term “fiduciary” means, and
67 includes, a guardian, trustee, executor, administrator,
68 receiver, conservator or any person acting in any fiduciary
69 capacity for any person.

70 (11) *Financial organization*. -- The term “financial
71 organization” means:

72 (A) A holding company or a subsidiary thereof. As used
73 in this section “holding company” means a corporation
74 registered under the federal Bank Holding Company Act of
75 1956 or registered as a savings and loan holding company
76 other than a diversified savings and loan holding company as
77 defined in Section 408(a)(1)(F) of the federal National
78 Housing Act, 12 U. S. C. §1730(a)(1)(F);

79 (B) A regulated financial corporation or a subsidiary
80 thereof. As used in this section “regulated financial
81 corporation” means:

82 (i) An institution, the deposits, shares or accounts of
83 which are insured under the Federal Deposit Insurance Act or
84 by the federal Savings and Loan Insurance Corporation;

85 (ii) An institution that is a member of a federal home loan
86 bank;

87 (iii) Any other bank or thrift institution incorporated or
88 organized under the laws of a state that is engaged in the
89 business of receiving deposits;

90 (iv) A credit union incorporated and organized under the
91 laws of this state;

92 (v) A production credit association organized under 12 U.
93 S. C. §2071;

94 (vi) A corporation organized under 12 U. S. C. §611
95 through §631 (an Edge Act corporation); or

96 (vii) A federal or state agency or branch of a foreign bank
97 as defined in 12 U. S. C. §3101; or

98 (C) A corporation which derives more than fifty percent
99 of its gross business income from one or more of the
100 following activities:

101 (i) Making, acquiring, selling or servicing loans or
102 extensions of credit. Loans and extensions of credit include:

103 (I) Secured or unsecured consumer loans;

104 (II) Installment obligations;

105 (III) Mortgages or other loans secured by real estate or
106 tangible personal property;

107 (IV) Credit card loans;

108 (V) Secured and unsecured commercial loans of any type;
109 and

110 (VI) Loans arising in factoring.

111 (ii) Leasing or acting as an agent, broker or advisor in
112 connection with leasing real and personal property that is the
113 economic equivalent of an extension of credit as defined by
114 the Federal Reserve Board in 12 CFR 225.25(b)(5).

115 (iii) Operating a credit card business.

116 (iv) Rendering estate or trust services.

117 (v) Receiving, maintaining or otherwise handling
118 deposits.

119 (vi) Engaging in any other activity with an economic
120 effect comparable to those activities described in
121 subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

122 (12) *Fiscal year*. -- The term “fiscal year” means an
123 accounting period of twelve months ending on any day other
124 than the last day of December and on the basis of which the
125 taxpayer is required to report for federal income tax purposes.

126 (13) *Includes and including*. -- The terms “includes” and
127 “including”, when used in a definition contained in this
128 article, do not exclude other things otherwise within the
129 meaning of the term being defined.

130 (14) *Insurance company*. -- The term “insurance
131 company” means any corporation subject to taxation under
132 section twenty-two, article three, chapter twenty-nine of this
133 code or chapter thirty-three of this code or an insurance
134 carrier subject to the surcharge imposed by subdivision (1) or
135 (3), subsection (f), section three, article two-c, chapter
136 twenty-three of this code or any corporation that would be
137 subject to taxation under any of those provisions were its
138 business transacted in this state.

139 (15) "Internal Revenue Code" means the Internal
140 Revenue Code as defined in section three of this article,
141 without regard to application of federal treaties unless
142 expressly made applicable to states of the United States.

143 (16) *Nonbusiness income*. -- The term “nonbusiness
144 income” means all income other than business income.

145 (17) “Partnership” means a general or limited partnership
146 or organization of any kind treated as a partnership for tax
147 purposes under the laws of this state.

148 (18) *Person*. -- The term “person” is considered
149 interchangeable with the term “corporation” in this section.
150 The term “person” means any individual, firm, partnership,
151 general partner of a partnership, limited liability company,
152 registered limited liability partnership, foreign limited
153 liability partnership, association, corporation whether or not
154 the corporation is, or would be if doing business in this state,
155 subject to the tax imposed by this article, company,
156 syndicate, estate, trust, business trust, trustee, trustee in
157 bankruptcy, receiver, executor, administrator, assignee or
158 organization of any kind.

159 (19) *Pro forma return*. -- The term “pro forma return”
160 when used in this article means the return which the taxpayer
161 would have filed with the Internal Revenue Service had it not
162 elected to file federally as part of an affiliated group.

163 (20) *Public utility*. -- The term “public utility” means any
164 business activity to which the jurisdiction of the Public
165 Service Commission of West Virginia extends under section
166 one, article two, chapter twenty-four of this code.

167 (21) *Qualified real estate investment trust*. -- The term
168 “Qualified Real Estate Investment Trust” means any real
169 estate invest trust where no single entity owns or controls,
170 directly or indirectly, constructively or otherwise, fifty
171 percent or more of the voting power or value of the beneficial
172 interests or shares of the trust, if the single entity is;

173 (A) Subject to the provisions of subchapter C, chapter 1,
174 subtitle A, title 26 of the United States Code, as amended;

175 (B) Not exempt from federal income tax pursuant to the
176 provisions of Section 501 of the Internal Revenue Code of
177 1986, as amended; and

178 (C) Not a real estate invest trust as defined in this section
179 or a qualified real estate invest trust subsidiary under Section
180 856(i) of the Internal Revenue Code of 1986, as amended.

181 (22) *Qualified regulated investment company.* -- The term
182 “Qualified Regulated Investment Company” means any
183 regulated company where no single entity owns or controls,
184 directly or indirectly, constructively or otherwise, fifty
185 percent or more of the voting power or value of the beneficial
186 interests or shares of the company, if the single entity is:

187 (A) Subject to the provision of subchapter C, chapter 1,
188 subtitle A, title 26 of the United States Code, as amended;

189 (B) Not exempt from federal income tax pursuant to the
190 provision of Section 501 of the Internal Revenue Code of
191 1986, as amended; and

192 (C) Not a regulated investment company as defined in
193 Section 3 of the Investment Company Act of 1940, as
194 amended, 15 U.S.C. 80a-3.

195 (23) *Real estate investment trust.* -- The term “Real Estate
196 Investment Trust” has the meaning ascribed to such term in
197 Section 856 of the Internal Revenue Code of 1986, as
198 amended.

199 (24) *Regulated investment company.* -- The term
200 “Regulated Investment Company” has the same meaning as

201 ascribed to such term in Section 851 of the Internal Revenue
202 Code of 1986, as amended.

203 (25) *Sales*. -- The term “sales” means all gross receipts of
204 the taxpayer that are “business income” as defined in this
205 section.

206 (26) *State*. -- The term “state” means any state of the
207 United States, the District of Columbia, the Commonwealth
208 of Puerto Rico, any territory or possession of the United
209 States and any foreign country or political subdivision
210 thereof.

211 (27) *Taxable year, tax year*. -- The term “taxable year” or
212 “tax year” means the taxable year for which the taxable
213 income of the taxpayer is computed under the federal income
214 tax law.

215 (28) *Tax*. -- The term “tax” includes, within its meaning,
216 interest and additions to tax, unless the intention to give it a
217 more limited meaning is disclosed by the context.

218 (29) *Tax Commissioner*. -- The term “Tax
219 Commissioner” means the Tax Commissioner of the State of
220 West Virginia or his or her delegate.

221 (30) “Tax haven” means a jurisdiction that, for a
222 particular tax year in question: (A) Is identified by the
223 Organization for Economic Cooperation and Development as
224 a tax haven or as having a harmful preferential tax regime; or
225 (B) a jurisdiction that has no, or nominal, effective tax on the
226 relevant income and: (i) That has laws or practices that
227 prevent effective exchange of information for tax purposes
228 with other governments regarding taxpayers subject to, or
229 benefitting from, the tax regime; (ii) that lacks transparency,
230 for purposes of this definition, a tax regime lacks
231 transparency if the details of legislative, legal or

232 administrative provisions are not open to public scrutiny and
233 apparent or are not consistently applied among similarly
234 situated taxpayers; (iii) facilitates the establishment of
235 foreign-owned entities without the need for a local
236 substantive presence or prohibits these entities from having
237 any commercial impact on the local economy; (iv) explicitly
238 or implicitly excludes the jurisdiction's resident taxpayers
239 from taking advantage of the tax regime's benefits or
240 prohibits enterprises that benefit from the regime from
241 operating in the jurisdiction's domestic market; or (v) has
242 created a tax regime which is favorable for tax avoidance,
243 based upon an overall assessment of relevant factors,
244 including whether the jurisdiction has a significant untaxed
245 offshore financial or other services sector relative to its
246 overall economy. For purposes of this definition, the phrase
247 "tax regime" means a set or system of rules, laws, regulations
248 or practices by which taxes are imposed on any person,
249 corporation or entity, or on any income, property, incident,
250 indicia or activity pursuant to governmental authority.

251 (31) *Taxpayer*. -- The term "taxpayer" means any person
252 subject to the tax imposed by this article.

253 (32) *This code*. -- The term "this code" means the Code
254 of West Virginia, one thousand nine hundred thirty-one, as
255 amended.

256 (33) *This state*. -- The term "this state" means the State of
257 West Virginia.

258 (34) "United States" means the United States of America
259 and includes all of the states of the United States, the District
260 of Columbia and United States territories and possessions.

261 (35) "Unitary business" means a single economic
262 enterprise that is made up either of separate parts of a single
263 business entity or of a commonly controlled group of

264 business entities that are sufficiently interdependent,
265 integrated and interrelated through their activities so as to
266 provide a synergy and mutual benefit that produces a sharing
267 or exchange of value among them and a significant flow of
268 value to the separate parts. For purposes of this article and
269 article twenty-three of this chapter, any business conducted
270 by a partnership shall be treated as conducted by its partners,
271 whether directly held or indirectly held through a series of
272 partnerships, to the extent of the partner's distributive share
273 of the partnership's income, regardless of the percentage of
274 the partner's ownership interest or the percentage of its
275 distributive or any other share of partnership income. A
276 business conducted directly or indirectly by one corporation
277 through its direct or indirect interest in a partnership is
278 unitary with that portion of a business conducted by one or
279 more other corporations through their direct or indirect
280 interest in a partnership if there is a synergy and mutual
281 benefit that produces a sharing or exchange of value among
282 them and a significant flow of value to the separate parts and
283 the corporations are members of the same commonly
284 controlled group.

285 (36) *West Virginia taxable income.* -- The term “West
286 Virginia taxable income” means the taxable income of a
287 corporation as defined by the laws of the United States for
288 federal income tax purposes, adjusted, as provided in this
289 article: *Provided,* That in the case of a corporation having
290 income from business activity which is taxable without this
291 state, its “West Virginia taxable income” shall be the portion
292 of its taxable income as defined and adjusted as is allocated
293 or apportioned to this state under the provisions of this
294 article.

**§11-24-4b. Regulated investment companies and real estate
investment trusts subject to tax.**

1 (a) The tax imposed by this article shall be imposed upon
2 regulated investment companies as defined by this article,
3 and shall be computed only upon that part of the net income
4 of the regulated investment company which is subject to
5 federal income tax as provided in Sections 852 and 4982 of
6 the Internal Revenue Code of 1986, as amended, except as
7 otherwise provided in this section.

8 (b) The dividend paid deduction otherwise allowed by a
9 federal law in computing net income of a regulated
10 investment company that is subject to federal income tax
11 shall be added back in computing the tax imposed by this
12 article unless the regulated invested company is a qualified
13 regulated investment company, as defined in this article.

14 (c) The tax imposed by this article shall be imposed upon
15 real estate investment trusts and shall be computed only upon
16 that part of the net income of the real estate investment trust
17 which is subject to federal income tax as provided in Sections
18 857 and 858 of the Internal Revenue Code of 1986, as
19 amended, except as otherwise provided in this section.

20 (d) The dividend paid deduction otherwise allowed by
21 federal law in computing net income of real estate investment
22 trusts that is subject to federal income tax shall be added back
23 in computing the tax imposed by this article unless the real
24 estate investment trust is either:

25 (1) Publicly traded on an established securities market; or,

26 (2) A qualified real estate investment trust, as defined in
27 this article.

CHAPTER 223

**(Com. Sub. for S.B. 573 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 8, 2008; in effect July 1, 2008.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18A-4-2, §18A-4-3 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to school personnel salary increases; increasing minimum salaries of public school teachers; increasing salary increment for principals and assistant principals; and increasing minimum salaries of school service personnel.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-3 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-4-3. State minimum annual salary increments for principals and assistant principals.

§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 MINIMUM SALARY SCHEDULE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years	4th	3rd	2nd		A.B.		M.A.	M.A.	M.A.	Doc-
Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
0	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
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

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TEACHERS' PAY RAISE

2271

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	4th	3rd	2nd		A.B.		M.A.	M.A.	M.A.	Doc-
Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
0	25,651	26,311	26,575	27,827	28,588	30,355	31,116	31,877	32,638	33,673
1	25,979	26,639	26,903	28,345	29,106	30,874	31,635	32,395	33,156	34,191
2	26,308	26,967	27,231	28,864	29,625	31,392	32,153	32,914	33,675	34,710
3	26,636	27,295	27,559	29,383	30,143	31,911	32,672	33,432	34,193	35,228
4	27,208	27,867	28,131	30,145	30,906	32,674	33,435	34,195	34,956	35,991

5	27,536	28,195	28,459	30,664	31,425	33,192	33,953	34,714	35,475	36,510
6	27,864	28,523	28,787	31,182	31,943	33,711	34,472	35,232	35,993	37,028
7	28,192	28,852	29,115	31,701	32,462	34,229	34,990	35,751	36,512	37,547
8	28,520	29,180	29,444	32,219	32,980	34,748	35,509	36,269	37,030	38,065
9	28,848	29,508	29,772	32,738	33,499	35,266	36,027	36,788	37,549	38,584
10	29,177	29,836	30,100	33,258	34,018	35,786	36,547	37,308	38,068	39,103
11	29,505	30,164	30,428	33,776	34,537	36,305	37,065	37,826	38,587	39,622
12	29,833	30,492	30,756	34,295	35,055	36,823	37,584	38,345	39,105	40,140
13	30,161	30,820	31,084	34,813	35,574	37,342	38,102	38,863	39,624	40,659
14	30,489	31,148	31,412	35,332	36,092	37,860	38,621	39,382	40,142	41,177
15	30,817	31,476	31,740	35,850	36,611	38,379	39,139	39,900	40,661	41,696
16	31,145	31,804	32,068	36,369	37,129	38,897	39,658	40,419	41,179	42,214
17	31,473	32,133	32,396	36,887	37,648	39,416	40,177	40,937	41,698	42,733
18	31,801	32,461	32,725	37,406	38,167	39,934	40,695	41,456	42,217	43,252
19	32,129	32,789	33,053	37,924	38,685	40,453	41,214	41,974	42,735	43,770
20	32,457	33,117	33,381	38,443	39,204	40,971	41,732	42,493	43,254	44,289
21	32,786	33,445	33,709	38,961	39,722	41,490	42,251	43,011	43,772	44,807
22	33,114	33,773	34,037	39,480	40,241	42,008	42,769	43,530	44,291	45,326
23	33,442	34,101	34,365	39,999	40,759	42,527	43,288	44,048	44,809	45,844
24	33,770	34,429	34,693	40,517	41,278	43,046	43,806	44,567	45,328	46,363
25	34,098	34,757	35,021	41,036	41,796	43,564	44,325	45,086	45,846	46,881
26	34,426	35,085	35,349	41,554	42,315	44,083	44,843	45,604	46,365	47,400
27	34,754	35,413	35,677	42,073	42,833	44,601	45,362	46,123	46,883	47,918
28	35,082	35,742	36,005	42,591	43,352	45,120	45,880	46,641	47,402	48,437
29	35,410	36,070	36,334	43,110	43,870	45,638	46,399	47,160	47,920	48,955
30	35,738	36,398	36,662	43,628	44,389	46,157	46,917	47,678	48,439	49,474
31	36,067	36,726	36,990	44,147	44,908	46,675	47,436	48,197	48,957	49,992
32	36,395	37,054	37,318	44,665	45,426	47,194	47,955	48,715	49,476	50,511
33	36,723	37,382	37,646	45,184	45,945	47,712	48,473	49,234	49,995	51,030
34	37,051	37,710	37,974	45,702	46,463	48,231	48,992	49,752	50,513	51,548
35	37,379	38,038	38,302	46,221	46,982	48,749	49,510	50,271	51,032	52,067

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-4-3. State minimum annual salary increments for
principals and assistant principals.**

1 (a) In addition to any salary increments for principals and
2 assistant principals, in effect on the first day of January, two
3 thousand eight, and paid from local funds, and in addition to
4 the county schedule in effect for teachers, the county board
5 shall pay each principal a principal's salary increment and
6 each assistant principal an assistant principal's salary
7 increment as prescribed by this section from state funds
8 appropriated for the salary increments.

9 (b) State funds for this purpose shall be paid within the
10 West Virginia public school support plan in accordance with
11 article nine-a, chapter eighteen of this code.

12 (c) The salary increment in this section for each principal
13 shall be determined by multiplying the basic salary for
14 teachers in accordance with the classification of certification
15 and of training of the principal as prescribed in this article by
16 the appropriate percentage rate prescribed in this section
17 according to the number of teachers supervised.

18 STATE MINIMUM SALARY INCREMENT

19 RATES FOR PRINCIPALS

20 EFFECTIVE UNTIL JULY 1, 2008

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21 No. of Teachers

22 Supervised Rates

23 1-7 10.0%

24 8-14 10.5%

25 15-24 11.0%

26 25-38 11.5%

27 39-57 12.0%

28 58 and up 12.5%

29 STATE MINIMUM SALARY INCREMENT

30 RATES FOR PRINCIPALS

31 EFFECTIVE ON AND AFTER JULY 1, 2008

32 No. of Teachers

33 Supervised Rates

34 1-7 11.0%

35 8-14 11.5%

36 15-24 12.0%

37 25-38 12.5%

38 39-57 13.0%

39 58 and up 13.5%

40 (d) The salary increment in this section for each assistant
41 principal shall be determined in the same manner as that for
42 principals using the number of teachers supervised by the
43 principal under whose direction the assistant principal works,
44 except that the percentage rate shall be fifty percent of the
45 rate prescribed for the principal.

46 (e) Salaries for employment beyond the minimum
47 employment term shall be at the same daily rate as the
48 salaries for the minimum employment terms.

49 (f) For the purpose of determining the number of teachers
50 supervised by a principal, the county board shall use data for
51 the second school month of the prior school term and the
52 number of teachers shall be interpreted to mean the total
53 number of professional educators assigned to each school on
54 a full-time equivalency basis: *Provided*, That if there is a
55 change in circumstances because of consolidation or
56 catastrophe, the county board shall determine what is a
57 reasonable number of supervised teachers in order to
58 establish the appropriate increment percentage rate.

59 (g) No county may reduce local funds allocated for salary
60 increments for principals and assistant principals in effect on
61 the first day of January, two thousand eight, and used in
62 supplementing the state minimum salaries as provided in this
63 article, unless forced to do so by defeat of a special levy, or
64 a loss in assessed values or events over which it has no
65 control and for which the county board has received approval
66 from the state board prior to making the reduction.

67 (h) Nothing in this section prevents a county board from
68 providing, in a uniform manner, salary increments greater
69 than those required by this section.

§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
 4 in 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.

STATE MINIMUM PAY SCALE PAY GRADE

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,577	1,598	1,639	1,691	1,743	1,805	1,836	1,908
1	1,609	1,630	1,671	1,723	1,775	1,837	1,868	1,940
2	1,641	1,662	1,703	1,755	1,807	1,869	1,900	1,972
3	1,673	1,694	1,735	1,787	1,839	1,901	1,932	2,004
4	1,705	1,726	1,767	1,819	1,871	1,933	1,964	2,037
5	1,737	1,758	1,799	1,851	1,903	1,965	1,996	2,069
6	1,769	1,790	1,832	1,883	1,935	1,997	2,028	2,101
7	1,802	1,822	1,864	1,915	1,967	2,029	2,060	2,133
8	1,834	1,854	1,896	1,947	1,999	2,061	2,092	2,165
9	1,866	1,886	1,928	1,980	2,031	2,093	2,124	2,197
10	1,898	1,919	1,960	2,012	2,063	2,126	2,157	2,229
11	1,930	1,951	1,992	2,044	2,095	2,158	2,189	2,261
12	1,962	1,983	2,024	2,076	2,128	2,190	2,221	2,293
13	1,994	2,015	2,056	2,108	2,160	2,222	2,253	2,325
14	2,026	2,047	2,088	2,140	2,192	2,254	2,285	2,357
15	2,058	2,079	2,120	2,172	2,224	2,286	2,317	2,389
16	2,090	2,111	2,152	2,204	2,256	2,318	2,349	2,422
17	2,122	2,143	2,185	2,236	2,288	2,350	2,381	2,454
18	2,154	2,175	2,217	2,268	2,320	2,382	2,413	2,486

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TEACHERS' PAY RAISE

2277

19	2,187	2,207	2,249	2,300	2,352	2,414	2,445	2,518
20	2,219	2,239	2,281	2,333	2,384	2,446	2,477	2,550
21	2,251	2,271	2,313	2,365	2,416	2,478	2,509	2,582
22	2,283	2,304	2,345	2,397	2,448	2,511	2,542	2,614
23	2,315	2,336	2,377	2,429	2,481	2,543	2,574	2,646
24	2,347	2,368	2,409	2,461	2,513	2,575	2,606	2,678
25	2,379	2,400	2,441	2,493	2,545	2,607	2,638	2,710
26	2,411	2,432	2,473	2,525	2,577	2,639	2,670	2,742
27	2,443	2,464	2,505	2,557	2,609	2,671	2,702	2,774
28	2,475	2,496	2,537	2,589	2,641	2,703	2,734	2,807
29	2,507	2,528	2,570	2,621	2,673	2,735	2,766	2,839
30	2,540	2,560	2,602	2,653	2,705	2,767	2,798	2,871
31	2,572	2,592	2,634	2,685	2,737	2,799	2,830	2,903
32	2,604	2,624	2,666	2,718	2,769	2,831	2,862	2,935
33	2,636	2,656	2,698	2,750	2,801	2,863	2,895	2,967
34	2,668	2,689	2,730	2,782	2,833	2,896	2,927	2,999
35	2,700	2,721	2,762	2,814	2,866	2,928	2,959	3,031
36	2,732	2,753	2,794	2,846	2,898	2,960	2,991	3,063
37	2,764	2,785	2,826	2,878	2,930	2,992	3,023	3,095
38	2,796	2,817	2,858	2,910	2,962	3,024	3,055	3,127
39	2,828	2,849	2,890	2,942	2,994	3,056	3,087	3,159
40	2,860	2,881	2,922	2,974	3,026	3,088	3,119	3,192

Class Title

Pay Grade

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

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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 used if the alternate hourly
85 rate of pay is approved both by the county board and by the
86 affirmative vote of a two-thirds majority of the regular full-
87 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 used in
119 the removal of asbestos material or related duties, they shall
120 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 (l) 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 required
128 to supervise, control, direct, monitor, escort or render service

129 to a child or children when not under the direct supervision of
130 certified professional personnel within the classroom, library,
131 hallway, lunchroom, gymnasium, school building, school
132 grounds or wherever supervision is required. For purposes of
133 this section, “under the direct supervision of certified
134 professional personnel” means that certified professional
135 personnel is present, with and accompanying the aide.



CHAPTER 224

**(S.B. 272 - By Senators Kessler, Oliverio, Chafin, Foster, Green,
Hunter, Jenkins, Minard, Stollings, Wells, Barnes, Deem, Hall,
McKenzie and Yoder)**

[Passed March 4, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend and reenact §46A-6F-113 of the Code of West Virginia, 1931, as amended, relating to definition of “telemarketing solicitation”.

Be it enacted by the Legislature of West Virginia:

That §46A-6F-113 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6F. TELEMARKETING.

§46A-6F-113. Telemarketer.

- 1 (a) “Telemarketer” means any person who initiates or
- 2 receives telephone calls to or from a consumer in this state

3 for the purpose of making a telemarketing solicitation as
4 defined in section one hundred twelve of this article.

5 (b) A telemarketer may initiate or receive a
6 communication that constitutes a telemarketing solicitation
7 on his own behalf, through a salesperson or through an
8 automated dialing machine.

9 (c) A telemarketer does not include any of the persons or
10 entities exempted pursuant to part II of this article.

11 (d) A telemarketer does not include a salesperson as
12 defined in section one hundred fourteen of this article.

13 (e) A telemarketer includes, but is not limited to, owners,
14 operators, officers, directors, partners or other individuals
15 engaged in the management activities of a business entity that
16 is subject to licensing and registration pursuant to this article.

CHAPTER 225

(Com. Sub. for H.B. 4624 - By Delegates Hutchins and Yost)

[Passed March 7, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §9A-1-10 of the Code of West Virginia, 1931, as amended, relating to describing the powers and duties of the director; providing for the hiring of case managers and counselors; providing for a program to advise veterans of available benefits and services; developing an internet website; and providing an expense per diem for volunteers who drive veterans to hospitals.

Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

***§9A-1-10. Powers and duties of director.**

1 The director is the executive and administrative head of
2 the division and has the power and duty, subject to the
3 provisions of section four of this article, to:

4 (a) Supervise and put into effect the purposes and
5 provisions of this article and the rules for the government of
6 the division;

7 (b) Prescribe methods pertaining to investigations and
8 reinvestigations of all claims and to the rights and interests of
9 all veterans, their widows, dependents and orphans;

10 (c) Prescribe uniform methods of keeping all records and
11 case records of the veterans, their widows, dependents and
12 orphans;

13 (d) Sign and execute, in the name of the state by West
14 Virginia Division of Veterans' Affairs, and by and with the
15 consent of the Veterans' Council, any contract or agreement
16 with the federal government or its agencies, other states,
17 subdivisions of this state, corporations, associations,
18 partnerships or individuals;

19 (e) Supervise the fiscal affairs and responsibilities of the
20 division;

***CLERK'S NOTE:** This section was also amended by SB 778 (Chapter 226), which passed prior to this act.

21 (f) Organize the division to comply with the requirements
22 of this article and with the standards required by any federal
23 act or any federal agency;

24 (g) Establish any regional or area offices throughout the
25 state that are necessary to promote efficiency and economy
26 in administration;

27 (h) Make reports that comply with the requirements of
28 any federal act or federal agency and the provisions of this
29 article;

30 (i) Cooperate with the federal and state governments for
31 the more effective attainment of the purposes of this article;

32 (j) Keep a complete and accurate record of all
33 proceedings; record and file all contracts and agreements and
34 assume responsibility for the custody and preservation of all
35 papers and documents pertaining to his or her office and the
36 division;

37 (k) Prepare for the Veterans' Council the annual reports
38 to the Governor of the condition, operation and functioning
39 of the division;

40 (l) Exercise any other powers necessary and proper to
41 standardize the work; to expedite the service and business; to
42 assure fair consideration of the rights and interests and claims
43 of veterans, their widows, dependents and orphans; to
44 provide resources for a program which will promote a greater
45 outreach to veterans and which will advise them of the
46 benefits and services that are available, and to promote the
47 efficiency of the division;

48 (m) Invoke any legal, equitable or special remedies for
49 the enforcement of his or her orders or the provisions of this
50 article;

51 (n) Appoint the veterans' affairs officers and heads of
52 divisions of the division, and of regional or area offices, and
53 employ assistants and employees, including case managers
54 and counselors, that are necessary for the efficient operation
55 of the division;

56 (o) Provide resources and assistance in the development
57 of an internet website which is to be used to inform veterans
58 of programs and services available to them through the
59 division and the state and federal governments;

60 (p) Delegate to all or any of his or her appointees,
61 assistants or employees all powers and duties vested in the
62 director, except the power to sign and execute contracts and
63 agreements, but the director shall be responsible for the acts
64 of his or her appointees, assistants and employees; and

65 (q) Provide volunteers who will drive or transport
66 veterans to veterans' hospitals from the veteran's home or
67 local veterans' affairs offices and who shall be paid an
68 expense per diem of seventy-five dollars.



CHAPTER 226

**(Com. Sub. for S.B. 778 - By Senators Hunter, Wells, Bailey
and Boley)**

[Passed March 6, 2008; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2008.]

AN ACT to amend and reenact §9A-1-10 of the Code of West Virginia, 1931, as amended, relating to describing the powers and duties of the director; providing for the hiring of case managers and counselors; providing for a program to advise

veterans of available benefits and services; and developing an internet website.

Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

***§9A-1-10. Powers and duties of director.**

1 The director is the executive and administrative head of
2 the division and has the power and duty, subject to the
3 provisions of section four of this article, to:

4 (a) Supervise and put into effect the purposes and
5 provisions of this article and the rules for the government of
6 the division;

7 (b) Prescribe methods pertaining to investigations and
8 reinvestigations of all claims and to the rights and interests of
9 all veterans, their widows, dependents and orphans;

10 (c) Prescribe uniform methods of keeping all records and
11 case records of the veterans, their widows, dependents and
12 orphans;

13 (d) Sign and execute, in the name of the state by West
14 Virginia Division of Veterans' Affairs, and by and with the
15 consent of the Veterans' Council, any contract or agreement
16 with the federal government or its agencies, other states,
17 subdivisions of this state, corporations, associations,
18 partnerships or individuals;

19 (e) Supervise the fiscal affairs and responsibilities of the
20 division;

CLERK'S NOTE: This section was also amended by HB 4624 (Chapter 225), which passed subsequent to this act.

21 (f) Organize the division to comply with the requirements
22 of this article and with the standards required by any federal
23 act or any federal agency;

24 (g) Establish any regional or area offices throughout the
25 state that are necessary to promote efficiency and economy
26 in administration;

27 (h) Make reports that comply with the requirements of
28 any federal act or federal agency and the provisions of this
29 article;

30 (i) Cooperate with the federal and state governments for
31 the more effective attainment of the purposes of this article;

32 (j) Keep a complete and accurate record of all
33 proceedings; record and file all contracts and agreements and
34 assume responsibility for the custody and preservation of all
35 papers and documents pertaining to his or her office and the
36 division;

37 (k) Prepare for the Veterans' Council the annual reports
38 to the Governor of the condition, operation and functioning
39 of the division;

40 (l) Exercise any other powers necessary and proper to
41 standardize the work; to expedite the service and business; to
42 assure fair consideration of the rights and interests and claims
43 of veterans, their widows, dependents and orphans; to
44 provide resources for a program which will promote a greater
45 outreach to veterans and which will advise them of the
46 benefits and services that are available, and to promote the
47 efficiency of the division;

48 (m) Invoke any legal, equitable or special remedies for
49 the enforcement of his or her orders or the provisions of this
50 article;

51 (n) Appoint the veterans' affairs officers and heads of
52 divisions of the division, and of regional or area offices, and
53 employ assistants and employees, including case managers
54 and counselors, that are necessary for the efficient operation
55 of the division;

56 (o) Provide resources and assistance in the development
57 of an internet website which is to be used to inform veterans
58 of programs and services available to them through the
59 division and the state and federal governments; and

60 (p) Delegate to all or any of his or her appointees,
61 assistants or employees all powers and duties vested in the
62 director, except the power to sign and execute contracts and
63 agreements, but the director shall be responsible for the acts
64 of his or her appointees, assistants and employees.

CHAPTER 227

**(Com. Sub. for S.B. 505 - By Senators Tomblin, Mr. President,
Hunter, Foster, Love, Kessler, Boley, McKenzie, Jenkins,
Plymale, Wells, Unger, Minard, Bailey, Sypolt and Edgell)**

[Passed March 4, 2008; in effect from passage.]
[Approved by the Governor on March 27, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9A-1-11a; and to amend and reenact §29-22-9a of said code, all relating to creating the Veterans Cemetery Fund for the construction and operation of veterans' cemeteries; and authorizing the appropriation of proceeds from the veterans instant lottery scratch-off game to the fund.

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 §9A-1-11a; and that §29-22-9a of said code be amended and reenacted, all to read as follows:

Chapter

9A. Veterans Affairs.

29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

§9A-1-11a. Establishment of Veterans Cemetery Fund.

1 There is hereby created in the State Treasury a special
2 revenue fund to be designated and known as the Veterans
3 Cemetery Fund which shall consist of excess revenues
4 derived from the veterans instant lottery scratch-off game as
5 appropriated to the fund by the Legislature and all interest or
6 other returns earned from investment of the fund. Funds may
7 also be derived from any gift, grant, bequest, endowed fund
8 or donation which may be received by any veterans cemetery
9 created by statute from any governmental entity or unit or
10 any person, firm, foundation or corporation. Any balance,
11 including accrued interest or other earnings, in this special
12 fund at the end of any fiscal year shall not revert to the
13 General Revenue Fund but shall remain in the fund.

**CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.**

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

1 (a) Beginning the first day of September, two thousand,
2 the commission shall establish an instant lottery scratch-off
3 game designated as the veterans benefit game, which is
4 offered by the lottery.

5 (b) Notwithstanding the provisions of section eighteen of
6 this article, all net profits received from the sale of veterans
7 benefit game lottery tickets, materials and games are
8 deposited with the State Treasurer into the Veterans Lottery
9 Fund created under subsection (c) of this section. The
10 Legislature may make appropriations from this fund for
11 operational costs from moneys remaining in the Veterans
12 Lottery Fund after the acquisition, design, construction,
13 equipping, furnishing, including, without limitation, the
14 payment of debt service on bonds issued to finance the
15 foregoing, have been paid. Funds from the Veterans Lottery
16 Fund for the acquisition, design, construction, equipping,
17 furnishing, including, without limitation, the payment of debt
18 service on bonds issued to finance the construction of a
19 veterans nursing home and/or veterans cemetery, shall be
20 transferred to the Veterans Nursing Home Building Fund and
21 the Veterans Cemetery Fund upon written request of the
22 Director of the Division of Veterans Affairs to the investment
23 management board and the State Treasurer in accordance
24 with the provisions of this section. Once the payment of the
25 principal and interest, any required operational costs and
26 architectural and other project costs associated with
27 construction are paid in full for the construction and
28 operation of the initial veterans skilled nursing facility or
29 veterans cemetery, the Legislature may appropriate from the
30 fund created under this section moneys for the construction,
31 including the architectural fees and other associated costs,
32 equipping and operation of additional skilled nursing
33 facilities and/or cemeteries for veterans of the armed forces
34 of the United States military: *Provided*, That in addition to
35 the payment of the above-mentioned items, funds may be
36 deposited in the Veterans Cemetery Fund created in section
37 eleven-a, article one, chapter nine-a of this code and,

38 thereafter, the Legislature may appropriate any excess funds
39 to the General Revenue Fund.

40 (c) There is hereby created in the State Treasury a special
41 revenue fund designated and known as the Veterans Lottery
42 Fund which shall consist of all revenues derived from the
43 veterans benefit game and any appropriations to the fund by
44 the Legislature and all interest or other returns earned from
45 investment of the fund.

46 (d) There is hereby created in the State Treasury a special
47 revenue fund designated and known as the Veterans Nursing
48 Home Building Fund which shall consist of all funds for the
49 acquisition, design, construction, equipping, furnishing,
50 including, without limitation, the payment of debt service on
51 bonds issued to finance the foregoing. Following the
52 selection of the architect, the director shall certify the
53 estimated total cost of the architect and all construction and
54 associated costs to the Joint Committee on Government and
55 Finance prior to the transfer of funds for construction. If
56 funds transferred exceed the estimated costs certified to the
57 joint committee, the director shall certify the additional costs
58 to the joint committee.

59 (e) There is hereby created in the State Treasury a special
60 revenue fund designated and known as the Veterans Nursing
61 Home Debt Service Fund to which the required funding from
62 the Veterans Nursing Home Building Fund is transferred to
63 refund revenue bonds to pay the principal, interest,
64 redemption premium and coverage ratio requirement, if any,
65 on the revenue bonds issued under the provisions of section
66 seven, article twenty-nine-a, chapter sixteen of this code.
67 The Veterans Nursing Home Debt Service Fund has first
68 priority to all funds in the Veterans Nursing Home Building
69 Fund established herein not otherwise designated or specified
70 by the donor. Beginning on or before the twenty-eighth day
71 of July, two thousand three, and continuing until the
72 twenty-eighth day of June, two thousand thirty-five, the
73 Treasurer shall allocate to the Veterans Nursing Home Debt

74 Service Fund from the Veterans Nursing Home Building
75 Fund, as a first priority, an amount equal to one tenth of the
76 projected annual principal, interest, redemption premium and
77 coverage ratio requirement on any and all revenue bonds and
78 refunding bonds issued, or to be issued, on or after the first
79 day of July, two thousand three, under the provisions of said
80 section in connection with a veterans nursing home as
81 certified to the Treasurer and the Investment Management
82 Board by the Director of the Division of Veterans Affairs. In
83 the event there are insufficient funds available in any month
84 to transfer the amount required pursuant to this subsection to
85 the Veterans Nursing Home Debt Service Fund, the
86 deficiency shall be added to the amount transferred in the
87 next succeeding month in which revenues are available to
88 transfer the deficiency.

89 (f) The commission shall change the design or theme of the
90 veterans benefit game regularly so that the game remains
91 competitive with the other instant lottery scratch-off games
92 offered by the commission. The tickets for the instant lottery
93 game created in this section shall clearly state that the profits
94 derived from the game are being used to benefit veterans in
95 this state.

CHAPTER 228

**(S.B. 641 - By Senators Tomblin, Mr. President, Unger, Fanning,
Green, Helmick, Hall, Prezioso, Kessler, Minard, Plymale
and Hunter)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §22-26-1, §22-26-2, §22-26-3, §22-
26-5 and §22-26-6 of the Code of West Virginia, 1931, as

amended; and to amend said code by adding thereto three new sections, designated §22-26-7, §22-26-8 and §22-26-9, all relating to the Water Resources Protection and Management Act; establishing legislative findings; defining certain terms; continuing the water resources survey; continuing mandatory registration of certain water users; requiring reports to the Legislature; requiring development of a state water resources management plan; authorizing surface and groundwater data collection; setting forth powers and duties of the Secretary of the Department of Environmental Protection with regard to development of water resources management plans; establishing criteria for a state water resources management plan; and authorizing development of regional and critical area water resources management plans.

Be it enacted by the Legislature of West Virginia:

That §22-26-1, §22-26-2, §22-26-3, §22-26-5 and §22-26-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §22-26-7, §22-26-8 and §22-26-9, all to read as follows:

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-1. Short title; legislative findings.

§22-26-2. Definitions.

§22-26-3. Waters claimed by state; water resources protection survey; registration requirements; agency cooperation; information gathering.

§22-26-5. Joint Legislative Oversight Commission on State Water Resources.

§22-26-6. Mandatory survey and registration compliance.

§22-26-7. Secretary authorized to log wells; collect data.

§22-26-8. State Water Resources Management Plan; powers and duty of secretary.

§22-26-9. Regional water resources management plans; critical planning areas.

§22-26-1. Short title; legislative findings.

- 1 (a) *Short title.* -- This article may be known and cited as
- 2 the Water Resources Protection and Management Act.

3 (b) *Legislative findings.* --

4 (1) The West Virginia Legislature finds that it is the
5 public policy of the State of West Virginia to protect and
6 conserve the water resources for the state and to provide for
7 the public welfare. The state's water resources are vital
8 natural resources of the state that are essential to maintain,
9 preserve and promote quality of life and economic vitality of
10 the state.

11 (2) The West Virginia Legislature further finds that it is
12 the public policy of the state that the water resources of the
13 state be available for the benefit of the citizens of West
14 Virginia, consistent with and preserving all other existing
15 rights and remedies recognized in common law or by statute,
16 while also preserving the resources within its sovereign
17 powers for the common good.

18 (3) The West Virginia Legislature further finds that the
19 water use survey conducted by the Department of
20 Environmental Protection is a valuable tool for water
21 resources assessment, protection and management.

22 (4) The West Virginia Legislature further finds that the
23 water resources of this state have not been fully measured or
24 assessed and that a program to accurately measure and assess
25 the state's water resources is necessary to protect, conserve
26 and better utilize the water resources of this state.

27 (5) The West Virginia Legislature further finds that the
28 survey information collected and analyzed by the Department
29 of Environmental Protection has identified the need for a
30 statewide water resources management plan.

31 (6) The West Virginia Legislature further finds that the
32 development of a state water resources management plan is
33 in the best interest of the state and its citizens and will
34 promote the protection of this valuable natural resource;

35 promote its use for the public good; and enhance its use and
36 development for tourism, industry and other economic
37 development for the benefit of the state and its citizens.

38 (7) The West Virginia Legislature further finds that
39 incomplete data collection from an inadequate groundwater
40 monitoring system continues to hamper efforts to study,
41 develop and protect the state's water resources and will be a
42 major obstacle in the development of a water resources
43 management plan.

§22-26-2. Definitions.

1 For purposes of this article, the following words have the
2 meanings assigned unless the context indicates otherwise:

3 (a) "Baseline average" means the average amount of
4 water withdrawn by a large quantity user over a
5 representative historical time period as defined by the
6 secretary.

7 (b) "Beneficial use" means uses that include, but are not
8 limited to, public or private water supplies, agriculture,
9 tourism, commercial, industrial, coal, oil and gas and other
10 mineral extraction, preservation of fish and wildlife habitat,
11 maintenance of waste assimilation, recreation, navigation and
12 preservation of cultural values.

13 (c) "Commercial well" means a well that serves small
14 businesses and facilities in which water is the prime
15 ingredient of the service rendered.

16 (d) "Community water system" means a public water
17 system that pipes water for human consumption to at least
18 fifteen service connections used by year-round residents or
19 one that regularly serves at least twenty-five residents.

20 (e) “Consumptive withdrawal” means any withdrawal of
21 water which returns less water to the water body than is
22 withdrawn.

23 (f) “Farm use” means irrigation of any land used for
24 general farming, forage, aquaculture, pasture, orchards,
25 nurseries, the provision of water supply for farm animals,
26 poultry farming or any other activity conducted in the course
27 of a farming operation.

28 (g) “Industrial well” means a well used in industrial
29 processing, fire protection, washing, packing or
30 manufacturing of a product excluding food and beverages or
31 similar nonpotable uses.

32 (h) “Interbasin transfer” means the permanent removal of
33 water from the watershed from which it is withdrawn.

34 (i) “Large quantity user” means any person who
35 withdraws over seven hundred fifty thousand gallons of water
36 in a calendar month from the state’s waters and any person
37 who bottles water for resale regardless of quantity
38 withdrawn.

39 (j) “Maximum potential” means the maximum designed
40 capacity of a facility to withdraw water under its physical and
41 operational design.

42 (k) “Noncommunity nontransient water system” means
43 a public water system that serves at least twenty-five of the
44 same persons over six months per year.

45 (l) “Nonconsumptive withdrawal” means any withdrawal
46 of water which is not a consumptive withdrawal as defined in
47 this section.

48 (m) “Person”, “persons” or “people” means an individual,
49 public and private business or industry, public or private
50 water service and governmental entity.

51 (n) “Secretary” means the Secretary of the Department of
52 Environmental Protection or his or her designee.

53 (o) “Transient water system” means a public water
54 system that serves at least twenty-five transient people at
55 least sixty days a year.

56 (p) “Test well” means a well that is used to obtain
57 information on groundwater quantity, quality, aquifer
58 characteristics and availability of production water supply for
59 manufacturing, commercial and industrial facilities.

60 (q) “Water resources”, “water” or “waters” means any
61 and all water on or beneath the surface of the ground,
62 whether percolating, standing, diffused or flowing, wholly or
63 partially within this state, or bordering this state and within
64 its jurisdiction and includes, without limiting the generality
65 of the foregoing, natural or artificial lakes, rivers, streams,
66 creeks, branches, brooks, ponds, impounding reservoirs,
67 springs, wells, watercourses and wetlands: *Provided*, That
68 farm ponds, industrial settling basins and ponds and waste
69 treatment facilities are excluded from the waters of the state.

70 (r) “Watershed” means a hydrologic unit utilized by the
71 United States Department of Interior’s geological survey,
72 adopted in one thousand nine hundred seventy-four, as a
73 framework for detailed water and related land-resources
74 planning.

75 (s) “Withdrawal” means the removal or capture of water
76 from water resources of the state regardless of whether it is
77 consumptive or nonconsumptive: *Provided*, That water
78 encountered during coal, oil, gas, water well drilling and
79 initial testing of water wells, or other mineral extraction and
80 diverted, but not used for any purpose and not a factor in
81 low-flow conditions for any surface water or groundwater, is
82 not deemed a withdrawal.

§22-26-3. Waters claimed by state; water resources protection survey; registration requirements; agency cooperation; information gathering.

1 (a) The waters of the State of West Virginia are hereby
2 claimed as valuable public natural resources held by the state
3 for the use and benefit of its citizens. The state shall manage
4 the quantity of its waters effectively for present and future
5 use and enjoyment and for the protection of the environment.
6 Therefore, it is necessary for the state to determine the nature
7 and extent of its water resources, the quantity of water being
8 withdrawn or otherwise used and the nature of the
9 withdrawals or other uses: *Provided*, That no provisions of
10 this article may be construed to amend or limit any other
11 rights and remedies created by statute or common law in
12 existence on the date of the enactment of this article.

13 (b) The secretary shall conduct an ongoing water
14 resources survey of consumptive and nonconsumptive
15 surface water and groundwater withdrawals by large quantity
16 users in this state. The secretary shall determine the form and
17 format of the information submitted, including the use of
18 electronic submissions. The secretary shall establish and
19 maintain a statewide registration program to monitor large
20 quantity users of water resources of this state beginning in
21 two thousand six.

22 (c) Large quantity users, except those who purchase
23 water from a public or private water utility or other service
24 that is reporting its total withdrawal, shall register with the
25 Department of Environmental Protection and provide all
26 requested survey information regarding withdrawals of the
27 water resources. Multiple withdrawals from state water
28 resources that are made or controlled by a single person and
29 used at one facility or location shall be considered a single
30 withdrawal of water. Water withdrawals for self-supplied
31 farm use and private households will be estimated. Water
32 utilities regulated by the Public Service Commission pursuant

33 to article two, chapter twenty-four of this code are exempted
34 from providing information on interbasin transfers to the
35 extent those transfers are necessary to provide water utility
36 services within the state.

37 (d) Except as provided in subsection (f) of this section,
38 large quantity users who withdraw water from a West
39 Virginia water resource shall comply with the survey and
40 registration requirements of this article. Registration shall be
41 maintained by every large quantity user by certifying, on
42 forms and in a manner prescribed by the secretary, that the
43 amount withdrawn in the previous calendar year varies by no
44 more than ten percent from the users' baseline average or by
45 certifying the change in usage.

46 (e) The secretary shall maintain a listing of all large
47 quantity users and each such user's baseline average water
48 withdrawal.

49 (f) The secretary shall make a good faith effort to obtain
50 survey and registration information from persons who are
51 withdrawing water from in-state water resources, but who are
52 located outside the state borders.

53 (g) All state agencies and local governmental entities that
54 have a regulatory, research, planning or other function
55 relating to water resources, including, but not limited to, the
56 State Geological and Economic Survey, the Division of
57 Natural Resources, the Public Service Commission, the
58 Bureau for Public Health, the Commissioner of the
59 Department of Agriculture, the Division of Homeland
60 Security and Emergency Management, Marshall University,
61 West Virginia University and regional, county and municipal
62 planning authorities may enter into interagency agreements
63 with the secretary and shall cooperate by: (i) Providing
64 information relating to the water resources of the state; (ii)
65 providing any necessary assistance to the secretary in
66 effectuating the purposes of this article; and (iii) assisting in

67 the development of a state water resources management plan.
68 The secretary shall determine the form and format of the
69 information submitted by these agencies.

70 (h) Persons required to participate in the survey and
71 registration shall provide any reasonably available
72 information on stream flow conditions that impact
73 withdrawal rates.

74 (i) Persons required to participate in the survey and
75 registration shall provide the most accurate information
76 available on water withdrawal during seasonal conditions and
77 future potential maximum withdrawals or other information
78 that the secretary determines is necessary for the completion
79 of the survey or registration: *Provided*, That a coal-fired
80 electric generating facility shall also report the nominal
81 design capacity of the facility, which is the quantity of water
82 withdrawn by the facility's intake pumps necessary to operate
83 the facility during a calendar day.

84 (j) The secretary shall, to the extent reliable water
85 withdrawal data is reasonably available from sources other
86 than persons required to provide data and participate in the
87 survey and registration, utilize that data to fulfill the
88 requirements of this section. If the data is not reasonably
89 available to the secretary, persons required to participate in
90 the survey and registration are required to provide the data.
91 Altering locations of intakes and discharge points that result
92 in an impact to the withdrawal of the water resources by an
93 amount of ten percent or more from the consecutive baseline
94 average shall also be reported.

95 (k) The secretary shall report annually to the Joint
96 Legislative Oversight Commission on State Water Resources
97 on the survey results. The secretary shall make a progress
98 report every three years on the development of the state water
99 resources management plan and any significant changes that

100 may have occurred since the survey report was submitted in
101 two thousand six.

102 (l) In addition to any requirements for completion of the
103 survey established by the secretary, the survey must
104 accurately reflect both actual and maximum potential water
105 withdrawal. Actual withdrawal shall be established through
106 metering, measuring or alternative accepted scientific
107 methods to obtain a reasonable estimate or indirect
108 calculation of actual use.

109 (m) The secretary shall make recommendations to the
110 joint legislative oversight commission created in section five
111 of this article relating to the implementation of a water
112 quantity management strategy for the state or regions of the
113 state where the quantity of water resources are found to be
114 currently stressed or likely to be stressed due to emerging
115 beneficial or other uses, ecological conditions or other factors
116 requiring the development of a strategy for management of
117 these water resources.

118 (n) The secretary may propose rules pursuant to article
119 three, chapter twenty-nine-a of this code as necessary to
120 implement the survey registration or plan requirements of this
121 article.

122 (o) The secretary is authorized to enter into cooperative
123 agreements with local, state and federal agencies and private
124 policy or research groups to obtain federal matching funds,
125 conduct research and analyze survey and registration data and
126 other agreements as may be necessary to carry out his or her
127 duties under this article.

**§22-26-5. Joint Legislative Oversight Commission on State
Water Resources.**

1 (a) The President of the Senate and the Speaker of the
2 House of Delegates shall each designate five members of

3 their respective houses, at least one of whom shall be a
4 member of the minority party, to serve on a joint legislative
5 oversight commission charged with immediate and ongoing
6 oversight of the water resources survey, registration and
7 development of a state water resources management plan.
8 This commission shall be known as the Joint Legislative
9 Oversight Commission on State Water Resources and shall
10 regularly investigate and monitor all matters relating to the
11 water resources survey and plan.

12 (b) The expenses of the commission, including the cost
13 of conducting the survey and monitoring any subsequent
14 strategy and those incurred in the employment of legal,
15 technical, investigative, clerical, stenographic, advisory and
16 other personnel, are to be approved by the Joint Committee
17 on Government and Finance and paid from legislative
18 appropriations.

§22-26-6. Mandatory survey and registration compliance.

1 (a) The water resources survey and subsequent registry
2 will provide critical information for protection of the state's
3 water resources and, thus, mandatory compliance with the
4 survey and registry is necessary.

5 (b) All large quantity users who withdraw water from a
6 West Virginia water resource shall complete the survey and
7 register such use with the Department of Environmental
8 Protection. Any person who fails to complete the survey or
9 register, provides false or misleading information on the
10 survey or registration, or fails to provide other information as
11 required by this article may be subject to a civil
12 administrative penalty not to exceed five thousand dollars to
13 be collected by the secretary consistent with the secretary's
14 authority pursuant to this chapter. Every thirty days after the
15 initial imposition of the civil administrative penalty, another
16 penalty may be assessed if the information is not provided.
17 The secretary shall provide written notice of failure to

18 comply with this section thirty days prior to assessing the
19 first administrative penalty.

§22-26-7. Secretary authorized to log wells; collect data.

1 In order to obtain important information about the state's
2 surface and groundwater, the secretary is authorized to
3 collect scientific data on surface and groundwater and to
4 enter into agreements with local and state agencies, the
5 federal government and private entities to obtain this
6 information.

7 (1) Any person who installs a community water system,
8 noncommunity nontransient water system, transient water
9 system, commercial well, industrial or test well, shall notify
10 the secretary of his or her intent to drill a water well no less
11 than ten days prior to commencement of drilling. The ten-
12 day notice is the responsibility of the owner, but may be
13 given by the drilling contractor.

14 (2) The secretary has the authority to gather data,
15 including driller and geologist logs, run electric and other
16 remote-sensing logs and devices and perform physical
17 characteristics tests on nonresidential and multifamily water
18 wells.

19 (3) The drilling contractor shall submit to the secretary a
20 copy of the well completion forms submitted to the Division
21 of Health for a community water system, noncommunity
22 nontransient water system, transient water system,
23 commercial well, industrial or test well. The drilling
24 contractor shall provide the well GPS location on the well
25 report.

26 (4) Any person who fails to notify the secretary prior to
27 drilling a well or impedes collection of information by the
28 secretary under this section is in violation of the Water
29 Resources Protection and Management Act and is subject to

30 the civil administrative penalty authorized by section six of
31 this article.

32 (5) Any well contracted for construction by the secretary
33 for groundwater or geological testing must be constructed at
34 a minimum to well design standards as promulgated by the
35 Division of Health. Any wells contracted for construction by
36 the secretary for groundwater or geological testing that would
37 at a later date be converted to a public use water well must be
38 constructed to comport to state public water design standards.

**§22-26-8. State Water Resources Management Plan; powers
and duty of secretary.**

1 (a) The Secretary of the Department of Environmental
2 Protection shall oversee the development of a State Water
3 Resources Management Plan to be completed no later than
4 the thirtieth day of November, two thousand thirteen. The
5 plan shall be reviewed and revised as needed after its initial
6 adoption. The plan shall be developed with the cooperation
7 and involvement of local and state agencies with regulatory,
8 research or other functions relating to water resources
9 including, but not limited to, those agencies and institutions
10 of higher education set forth in section three of this article
11 and a representative of large quantity users. The State Water
12 Resources Management Plan shall be developed utilizing the
13 information obtained pursuant to said section and any other
14 relevant information available to the secretary.

15 (b) The secretary shall develop definitions for use in the
16 State Water Resources Management Plan for terms that are
17 defined differently by various state and federal governmental
18 entities as well as other terms necessary for implementation
19 of this article.

20 (c) The secretary shall continue to develop and obtain the
21 following:

22 (1) An inventory of the surface water resources of each
23 region of this state, including an identification of the
24 boundaries of significant watersheds and an estimate of the
25 safe yield of such sources for consumptive and
26 nonconsumptive uses during periods of normal conditions
27 and drought.

28 (2) A listing of each consumptive or nonconsumptive
29 withdrawal by a large quantity user, including the amount of
30 water used, location of the water resources, the nature of the
31 use, location of each intake and discharge point by longitude
32 and latitude where available and, if the use involves more
33 than one watershed or basin, the watersheds or basins
34 involved and the amount transferred.

35 (3) A plan for the development of the infrastructure
36 necessary to identify the groundwater resources of each
37 region of this state, including an identification of aquifers and
38 groundwater basins and an assessment of their safe yield,
39 prime recharge areas, recharge capacity, consumptive limits
40 and relationship to stream base flows.

41 (4) After consulting with the appropriate state and federal
42 agencies, assess and project the existing and future
43 nonconsumptive use needs of the water resources required to
44 serve areas with important or unique natural, scenic,
45 environmental or recreational values of national, regional,
46 local or statewide significance, including national and state
47 parks; designated wild, scenic and recreational rivers;
48 national and state wildlife refuges; and the habitats of federal
49 and state endangered or threatened species.

50 (5) Assessment and projection of existing and future
51 consumptive use demands.

52 (6) Identification of potential problems with water
53 availability or conflicts among water uses and users
54 including, but not limited to, the following:

55 (A) A discussion of any area of concern regarding
56 historical or current conditions that indicate a low-flow
57 condition or where a drought or flood has occurred or is
58 likely to occur that threatens the beneficial use of the surface
59 water or groundwater in the area; and

60 (B) Current or potential in-stream or off-stream uses that
61 contribute to or are likely to exacerbate natural low-flow
62 conditions to the detriment of the water resources.

63 (7) Establish criteria for designation of critical water
64 planning areas comprising any significant hydrologic unit
65 where existing or future demands exceed or threaten to
66 exceed the safe yield of available water resources.

67 (8) An assessment of the current and future capabilities
68 of public water supply agencies and private water supply
69 companies to provide an adequate quantity and quality of
70 water to their service areas.

71 (9) An assessment of flood plain and stormwater
72 management problems.

73 (10) Efforts to improve data collection, reporting and
74 water monitoring where prior reports have found
75 deficiencies.

76 (11) A process for identifying projects and practices that
77 are being, or have been, implemented by water users that
78 reduce the amount of consumptive use, improve efficiency in
79 water use, provide for reuse and recycling of water, increase
80 the supply or storage of water or preserve or increase
81 groundwater recharge and a recommended process for
82 providing appropriate positive recognition of such projects or
83 practices in actions, programs, policies, projects or
84 management activities.

85 ___ (12) An assessment of both structural and nonstructural
86 alternatives to address identified water availability problems,
87 adverse impacts on water uses or conflicts between water
88 users, including potential actions to develop additional or
89 alternative supplies, conservation measures and management
90 techniques.

91 (13) A review and evaluation of statutes, rules, policies
92 and institutional arrangements for the development,
93 conservation, distribution and emergency management of
94 water resources.

95 (14) A review and evaluation of water resources
96 management alternatives and recommended programs,
97 policies, institutional arrangements, projects and other
98 provisions to meet the water resources needs of each region
99 and of this state.

100 (15) Proposed methods of implementing various
101 recommended actions, programs, policies, projects or
102 management activities.

103 (d) The State Water Resources Management Plan shall
104 consider:

105 (1) The interconnections and relationships between
106 groundwater and surface water as components of a single
107 hydrologic resource.

108 (2) Regional or watershed water resources needs,
109 objectives and priorities.

110 (3) Federal, state and interstate water resource policies,
111 plans, objectives and priorities, including those identified in
112 statutes, rules, regulations, compacts, interstate agreements
113 or comprehensive plans adopted by federal and state agencies
114 and compact basin commissions.

115 (4) The needs and priorities reflected in comprehensive
116 plans and zoning ordinances adopted by a county or
117 municipal government.

118 (5) The water quantity and quality necessary to support
119 reasonable and beneficial uses.

120 (6) A balancing and encouragement of multiple uses of
121 water resources, recognizing that all water resources of this
122 state are capable of serving multiple uses and human needs,
123 including multiple uses of water resources for reasonable and
124 beneficial uses.

125 (7) The distinctions between short-term and long-term
126 conditions, impacts, needs and solutions to ensure
127 appropriate and cost-effective responses to water resources
128 issues.

129 (8) Application of the principle of equal and uniform
130 treatment of all water users that are similarly situated without
131 regard to established political boundaries.

132 (e) In November of each year, the secretary shall report
133 to the Joint Legislative Oversight Commission on State
134 Water Resources on the State water Resources Management
135 Plan. The report on the water resources plan shall include
136 benchmarks for achieving the plan's goals and time frames
137 for meeting them.

138 (f) Upon adoption of the State Water Resources
139 Management Plan by the Legislature, the report requirements
140 of this article shall be superseded by the plan and subsequent
141 reports shall be on the survey results and the water resources
142 plan. If the plan is not adopted a detailed report discussing
143 the provisions of this section as well as progress reports on
144 the development of the plan shall be submitted every three
145 years.

§22-26-9. Regional water resources management plans; critical planning areas.

1 (a) As part of the State Water Resources Management
2 Plan, the secretary may designate areas of the state as
3 regional or critical water planning areas for the development
4 of regional or critical area water resources management
5 plans.

6 (b) The secretary shall establish a timetable for
7 completion of regional and critical area plans which may be
8 developed.

9 (c) The secretary shall identify all federal and state
10 agencies, county commissions, municipal governments and
11 watershed associations that should be involved in the
12 planning process and any compacts or interstate agreements
13 that may be applicable to the development of a regional or
14 critical area water resource management plan.

15 (d) The secretary shall establish the minimum
16 requirements for any issues to be addressed by regional and
17 critical area plans within twelve months of the amendment
18 and reenactment of this article during the two thousand eight
19 regular session of the Legislature. The plan requirements and
20 issues to be addressed by regional and critical area plans shall
21 be consistent with the state plan requirements of this article.

22 (e) The secretary shall establish timetables for the
23 completion of tasks or phases in the development of regional
24 and critical area plans. County commissions and municipal
25 governments may recommend changes in the order in which
26 the tasks and phases must be completed. The secretary shall
27 have final authority to determine the schedule for
28 development of a plan.

29 (f) Any county or municipal government may enter into
30 an agreement with the secretary to designate a local planning

31 area and develop a local plan which may include all or part
32 of a region. The secretary shall assist in development of any
33 such plan to the extent practicable with existing staff and
34 funding.

35 (g) Plans developed by a county or municipal government
36 shall comply with the secretary's requirements and shall be
37 filed as part of the State Water Resources Management Plan.

CHAPTER 229

(Com. Sub. for H.B. 4636 - By Delegate Kominar)

[Passed March 8, 2008; in effect from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §5A-3-10a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §23-1-20; to amend said code by adding thereto a new section, designated §23-2-9a; to amend and reenact §23-2C-3, §23-2C-15 and §23-2C-17 of said code; to amend and reenact §23-4-7b of said code; and to amend and reenact §23-5-1 and §23-5-11 of said code, all relating generally to workers' compensation insurance; prohibiting public contracts with employers in workers' compensation default; establishing hiring preferences for employees of the Attorney General's workers' compensation litigation unit and permitting Division of Personnel to propose rules regarding such preferences; providing for the termination of licenses and permits to self-insured employers in workers' compensation default; requiring the proposal of rules to regulate certain third-party administrators; requiring proposal of rules relating to establishing penalties for certain defaults; eliminating requirement that private carriers maintain an office in the state;

modifying certain information that must be on posted notice in work place; changing period of notice for cancellation of policies; establishing fixed percentages for determining surcharges on covered employers and permitting recalculation of one such percentage; eliminating certain carrier reporting requirements; changing periods within which private carriers must notify the Insurance Commissioner regarding coverage status; limiting employer protests; increasing the periods in which to file objections to claims decisions; providing for conditional payment of benefits; providing that corrective orders do not nullify pending protests; providing for proposal of rules relating to establishing a trial return to work period for employees; and requiring the Governor to set salaries of members of the Workers' Compensation Board of Review.

Be it enacted by the Legislature of West Virginia:

That §5A-3-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-1-20; that said code be amended by adding thereto a new section, designated §23-2-9a; that §23-2C-3, §23-2C-15 and §23-2C-17 of said code be amended and reenacted; that §23-4-7b of said code be amended and reenacted; and that §23-5-1 and §23-5-11 of said code be amended and reenacted, all to read as follows:

Chapter

5A. Department of Administration.

23. Workers' Compensation.

**CHAPTER 5A. DEPARTMENT OF
ADMINISTRATION.**

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its political subdivisions.

1 (a) Unless the context clearly requires a different
2 meaning, for the purposes of this section, the terms:

3 (1) "Debt" means any assessment, premium, penalty,
4 fine, tax or other amount of money owed to the state or any
5 of its political subdivisions because of a judgment, fine,
6 permit violation, license assessment, amounts owed to the
7 Workers' Compensation Funds as defined in article two-c,
8 chapter twenty-three of this code, penalty or other assessment
9 or surcharge presently delinquent or due and required to be
10 paid to the state or any of its political subdivisions, including
11 any interest or additional penalties accrued thereon.

12 (2) "Debtor" means any individual, corporation,
13 partnership, association, limited liability company or any
14 other form or business association owing a debt to the state
15 or any of its political subdivisions, and includes any person
16 or entity that is in employer default.

17 (3) "Employer default" means having an outstanding
18 balance or liability to the old fund or to the uninsured
19 employers' fund or being in policy default, as defined in
20 section two, article two-c, chapter twenty-three, of this code,
21 failure to maintain mandatory workers' compensation
22 coverage, or failure to fully meet its obligations as a workers'
23 compensation self-insured employer. An employer is not in
24 employer default if it has entered into a repayment agreement
25 with the Insurance Commissioner and remains in compliance
26 with the obligations under the repayment agreement.

27 (4) "Political subdivision" means any county
28 commission; municipality; county board of education; any
29 instrumentality established by a county or municipality; any
30 separate corporation or instrumentality established by one or
31 more counties or municipalities, as permitted by law; or any
32 public body charged by law with the performance of a
33 government function and whose jurisdiction is coextensive
34 with one or more counties or municipalities.

35 (5) "Related party" means a party, whether an individual,
36 corporation, partnership, association, limited liability
37 company or any other form or business association or other
38 entity whatsoever, related to any vendor by blood, marriage,
39 ownership or contract through which the party has a
40 relationship of ownership or other interest with the vendor so
41 that the party will actually or by effect receive or control a
42 portion of the benefit, profit or other consideration from
43 performance of a vendor contract with the party receiving an
44 amount that meets or exceeds five percent of the total
45 contract amount.

46 (b) No contract or renewal of any contract may be
47 awarded by the state or any of its political subdivisions to any
48 vendor or prospective vendor when the vendor or prospective
49 vendor or a related party to the vendor or prospective vendor
50 is a debtor and:

51 (1) The debt owed is an amount greater than one
52 thousand dollars in the aggregate; or

53 (2) The debtor is in employer default.

54 (c) The prohibition of this section does not apply where
55 a vendor has contested any tax administered pursuant to
56 chapter eleven of this code, amount owed to the Workers'
57 Compensation Funds as defined in article two-c, chapter
58 twenty-three of this code, permit fee or environmental fee or
59 assessment and the matter has not become final or where the
60 vendor has entered into a payment plan or agreement and the
61 vendor is not in default of any of the provisions of such plan
62 or agreement.

63 (d) All bids, contract proposals or contracts with the state
64 or any of its political subdivisions submitted or approved
65 under the provisions of this code shall include an affidavit
66 that the vendor, prospective vendor or a related party to the
67 vendor or prospective vendor is not in employer default and

68 does not owe any debt in an amount in excess of one
69 thousand dollars or, if a debt is owed, that the provisions of
70 subsection (c) of this section apply.

Article

1. **General Administrative Provisions.**
2. **Employers and Employees Subject to This Chapter; Extraterritorial Coverage.**
- 2C. **Employers' Mutual Insurance Company.**
4. **Disability and Death Benefits.**
5. **Review.**

CHAPTER 23. WORKERS' COMPENSATION.**ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.****§23-1-20. Employment preference for employees in workers' compensation litigation unit.**

1 (a) The Legislature finds that, as claims against the
2 Workers' Compensation Old Fund continue to decrease,
3 persons currently employed on a permanent basis by the
4 Attorney General in the workers' compensation litigation unit
5 may soon face layoffs due to the decreasing workload. The
6 Legislature hereby declares that such employees should have
7 certain preferences if they seek continued employment with
8 the state.

9 (b) Notwithstanding any provision of this code to the
10 contrary, any person, not a temporary or probationary
11 employee, employed by the Attorney General in the workers'
12 compensation litigation unit who is laid off as a result of a
13 decreased workload, shall be afforded the opportunity to
14 transfer to other state employment if he or she is an employee
15 in good standing at the time of the layoff.

16 (c) The Attorney General shall establish and maintain, for
17 a period of two years, a list of all employees who are eligible
18 for employment due to a layoffs pursuant to this section, and
19 who wish to remain eligible for employment with the state.
20 The Attorney General shall give priority to any person on the

21 list for employment in an available position equivalent to the
22 position that person held in the workers' compensation
23 litigation unit unless the Attorney General determines that the
24 person is less qualified than other applicants for the position.

25 (d) Notwithstanding any other provision of this code to
26 the contrary, the Division of Personnel shall maintain, for a
27 period of two years, a list of employees who were laid off as
28 a result of the reduction in the work force occasioned by the
29 decreasing work load of the workers' compensation litigation
30 unit within the office of the Attorney General. Any such
31 employee shall be given preference in hiring for any position
32 in classified or exempt service for which he or she is
33 qualified and applies. The Director of the Division of
34 Personnel may propose for promulgation, in accordance with
35 the provisions of article three, chapter twenty-nine-a of this
36 code, a legislative rule to effectuate the requirements of this
37 section.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO
THIS CHAPTER; EXTRATERRITORIAL
COVERAGE.**

**§23-2-9a. Sanctions for default by self-insured employers;
rulemaking authority.**

1 Whenever the authority of an employer to self-insure its
2 obligations under this chapter is terminated and such
3 employer is thereafter in default in the payment of any
4 portion of surcharges or assessments required under this
5 chapter or by rules promulgated thereunder, or in any
6 payment required to be made as benefits provided by this
7 chapter to the employer's injured employees or dependents of
8 fatally injured employees, such employer shall be ineligible
9 for government contracts to the same extent as an employer
10 in "employer default," as provided for in section ten-a, article
11 three, chapter five-a of this code, and shall also be subject to
12 the license and permit revocation and termination sanctions

13 to the same extent as employers in “employer default”
14 pursuant to the provisions of subdivision (1), subsection (e),
15 section nineteen, article two-c of this chapter. The Insurance
16 Commissioner shall propose rules, as provided in section
17 five, article two-c of this chapter, establishing administrative
18 penalties for nonpayment of obligations under this chapter.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

§23-2C-15. Mandatory coverage; changing of coverage.

§23-2C-17. Administration of a competitive system.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before the first day of June, two thousand
2 five, the executive director may take such actions as are
3 necessary to establish an employers' mutual insurance
4 company as a domestic, private, nonstock, corporation to:

5 (A) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to this chapter and
8 federal Longshore and Harbor Workers' Compensation Act,
9 33 U.S.C. §901, *et seq.*;

10 (B) Provide employer's liability insurance incidental to
11 and provided in connection with the insurance specified in
12 paragraph (A) of this subdivision, including coal-workers'
13 pneumoconiosis coverage and employer excess liability
14 coverage as provided in this chapter; and

15 (C) Transact other kinds of property and casualty
16 insurance for which the company is otherwise qualified under
17 the provisions of this code.

18 (2) The company may not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic mutual
21 insurance company pursuant to subsection (a) of this section:

22 (1) As soon as practical, the company established
23 pursuant to the provisions of this article shall, through a vote
24 of a majority of its provisional board, file its corporate
25 charter and bylaws with the Insurance Commissioner and
26 apply for a license with the Insurance Commissioner to
27 transact insurance in this state. Notwithstanding any other
28 provision of this code, the Insurance Commissioner shall act
29 on the documents within fifteen days of the filing by the
30 company.

31 (2) In recognition of the workers' compensation insurance
32 liability insurance crisis in this state at the time of enactment
33 of this article and the critical need to expedite the initial
34 operation of the company, the Legislature authorizes the
35 Insurance Commissioner to review the documentation
36 submitted by the company and to determine the initial capital
37 and surplus requirements of the company, notwithstanding
38 the provisions of section five-b, article three, chapter
39 thirty-three of this code. The company shall furnish the
40 Insurance Commissioner with all information and cooperate
41 in all respects necessary for the Insurance Commissioner to
42 perform the duties set forth in this section and in other
43 provisions of this chapter and chapter thirty-three of this
44 code. The Insurance Commissioner shall monitor the
45 economic viability of the company during its initial operation
46 on not less than a monthly basis, until the commissioner, in
47 his or her discretion, determines that monthly reporting is not
48 necessary. In all other respects the company shall comply
49 with the applicable provisions of chapter thirty-three of this
50 code.

51 (3) Subject to the provisions of subdivision (4) of this
52 subsection, the Insurance Commissioner may waive other

53 requirements imposed on mutual insurance companies by the
54 provisions of chapter thirty-three of this code the Insurance
55 Commissioner determines are necessary to enable the
56 company to begin insuring employers in this state at the
57 earliest possible date.

58 (4) Within forty months of the date of the issuance of its
59 license to transact insurance, the company shall comply with
60 the capital and surplus requirements set forth in subsection
61 (a), section five-b, article three, chapter thirty-three of this
62 code in effect on the effective date of this enactment, unless
63 the deadline is extended by the Insurance Commissioner.

64 (c) For the duration of its existence, the company is not
65 a department, unit, agency or instrumentality of the state for
66 any purpose. All debts, claims, obligations and liabilities of
67 the company, whenever incurred, are the debts, claims,
68 obligations and liabilities of the company only and not of the
69 state or of any department, unit, agency, instrumentality,
70 officer or employee of the state.

71 (d) The moneys of the company are not part of the
72 General Revenue Fund of the state. The debts, claims,
73 obligations and liabilities of the company are not a debt of
74 the state or a pledge of the credit of the state.

75 (e) The company is not subject to provisions of article
76 nine-a, chapter six of this code; the provisions of article two,
77 chapter six-c of this code; the provisions of chapter
78 twenty-nine-b of this code; the provisions of article three,
79 chapter five-a of this code; the provisions of article six,
80 chapter twenty-nine of this code; or the provisions of chapter
81 twelve of this code.

82 (f) If the commission has been terminated, effective upon
83 the termination, private carriers, including the company, are
84 not subject to payment of premium taxes, surcharges and
85 credits contained in article three, chapter thirty-three of this

86 code on premiums received for coverage under this chapter.
87 In lieu thereof, the workers' compensation insurance market
88 is subject to the following:

89 (1) (A) Each fiscal year, the Insurance Commissioner
90 shall calculate a percentage surcharge to be collected by each
91 private carrier from its policyholders. The surcharge
92 percentage shall be calculated by dividing the previous fiscal
93 year's total premiums collected plus deductible payments by
94 all employers into the portion of the Insurance
95 Commissioner's budget amount attributable to regulation of
96 the private carrier market. This resulting percentage shall be
97 applied to each policyholder's premium payment and
98 deductible payments as a surcharge and remitted to the
99 Insurance Commissioner. Said surcharge shall be remitted
100 within ninety days of receipt of premium payments;

101 (B) With respect to fiscal years beginning on and after the
102 first day of July, two thousand eight, in lieu of the surcharge
103 set forth in the preceding paragraph, each private carrier shall
104 collect a surcharge in the amount of five and five-tenths
105 percent of the premium collected plus the total of all
106 premium discounts based on deductible provisions that were
107 applied: *Provided*, That prior to the thirtieth day of June,
108 two-thousand thirteen, and every five years thereafter, the
109 commissioner shall review the percentage surcharge and
110 determine a new percentage as he or she deems necessary.

111 (C) The amounts required to be collected under paragraph
112 (B) of this subdivision shall be remitted to the Insurance
113 Commissioner on or before the twenty-fifth day of the month
114 succeeding the end of the quarter in which they are collected,
115 except for the fourth quarter for which the surcharge shall be
116 remitted on or before the first day of March of the succeeding
117 year.

118 (2) Each fiscal year, the Insurance Commissioner shall
119 calculate a percentage surcharge to be remitted on a quarterly

120 basis by self-insured employers and said percentage shall be
121 calculated by dividing previous year's self-insured payroll in
122 the state into the portion of the Insurance Commissioner's
123 budget amount attributable to regulation of the self-insured
124 employer market. This resulting percentage shall be applied
125 to each self-insured employer's payroll and the resulting
126 amount shall be remitted as a regulatory surcharge by each
127 self-insured employer. The Industrial Council may
128 promulgate a rule for implementation of this section. The
129 company, all other private carriers and all self-insured
130 employers shall furnish the Insurance Commissioner with all
131 required information and cooperate in all respects necessary
132 for the Insurance Commissioner to perform the duties set
133 forth in this section and in other provisions of this chapter
134 and chapter thirty-three of this code. The surcharge shall be
135 calculated so as to only defray the costs associated with the
136 administration of this chapter and the funds raised shall not
137 be used for any other purpose;

138 (3) (A) Each private carrier shall collect a premiums
139 surcharge from its policyholders as annually determined, by
140 the first day of May of each year, by the Insurance
141 Commissioner to produce forty-five million dollars annually,
142 of each policyholder's periodic premium amount for workers'
143 compensation insurance: *Provided*, That the surcharge rate on
144 policies issued or renewed on or after the first day of July,
145 two thousand eight shall be nine percent of the premium
146 collected plus the total of all premium discounts based on
147 deductible provisions that were applied.

148 (B) By the first day of May each year, the self-insured
149 employer community shall be assessed a cumulative total of
150 nine million dollars. The methodology for the assessment
151 shall be fair and equitable and determined by exempt
152 legislative rule issued by the Industrial Council. The amount
153 collected pursuant to this subdivision shall be remitted to the
154 Insurance Commissioner for deposit in the Workers'
155 Compensation Debt Reduction Fund created in section five,
156 article two-d of this chapter.

157 (g) The new premiums surcharge imposed by paragraphs
158 (A) and (B), subdivision (3), subsection (f) of this section
159 sunset and are not collectible with respect to workers'
160 compensation insurance premiums paid when the policy is
161 renewed on or after the first day of the month following the
162 month in which the Governor certifies to the Legislature that
163 the revenue bonds issued pursuant to article two-d of this
164 chapter have been retired and that the unfunded liability of
165 the Old Fund has been paid or has been provided for in its
166 entirety, whichever occurs last.

§23-2C-15. Mandatory coverage; changing of coverage.

1 (a) Effective upon termination of the commission, all
2 subscriber policies with the commission shall novate to the
3 company and all employers shall purchase workers'
4 compensation insurance from the company unless permitted
5 to self-insure their obligations. The company shall assume
6 responsibility for all new fund obligations of the subscriber
7 policies which novate to the company or which are issued
8 thereafter. Each subscriber whose policy novates to the
9 company shall also have its advanced deposit credited to its
10 account with the company. Each employer purchasing
11 workers' compensation insurance from the company have the
12 right to designate a representative or agent to act on its behalf
13 in any and all matters relevant to coverage and claims
14 administered by the company.

15 (b) Effective the first day of July, two thousand eight, an
16 employer may elect to: (1) Continue to purchase workers'
17 compensation insurance from the company; (2) purchase
18 workers' compensation insurance from another private carrier
19 licensed and otherwise authorized to transact workers'
20 compensation insurance in this state; or (3) self-insure its
21 obligations if it satisfies all requirements of this code to so
22 self-insure and is permitted to do so: *Provided*, That all state
23 and local governmental bodies, including, but not limited to,
24 all counties and municipalities and their subdivisions and

25 including all boards, colleges, universities and schools, shall
26 continue to purchase workers' compensation insurance from
27 the company through the thirtieth day of June, two thousand
28 twelve. The company and other private carriers are permitted
29 to sell workers' compensation insurance through licensed
30 agents in the state. To the extent that a private carrier
31 markets workers' compensation insurance through a licensed
32 agent, it is subject to all applicable provisions of chapter
33 thirty-three of this code.

34 (c) Every employer shall post a notice upon its premises
35 in a conspicuous place identifying its workers' compensation
36 insurer. The notice must include the name, business address
37 and telephone number of the insurer and of the person to
38 contact with questions about a claim. The employer shall at
39 all times maintain the notice provided for the information of
40 his or her employees. Release of employer policy
41 information and status by the Industrial Council and the
42 Insurance Commissioner shall be governed by section four,
43 article one of this chapter.

44 (d) Any rule promulgated by the Board of Managers or
45 Industrial Council empowering agencies of this state to
46 revoke or refuse to grant, issue or renew any contract,
47 license, permit, certificate or other authority to conduct a
48 trade, profession or business to or with any employer whose
49 account is in default with regard to any liability under this
50 chapter shall be fully enforceable by the Insurance
51 Commissioner against the employer.

52 (e) Effective the first day of January, two thousand nine,
53 the company may decline to offer coverage to any applicant.
54 Private carriers and, effective the first day of January, two
55 thousand nine, the company, may cancel a policy upon the
56 issuance of thirty days' written advance notice to the
57 policyholder and may refuse to renew a policy upon the
58 issuance of sixty days' written advance notice to the
59 policyholder: *Provided*, That cancellation of the policy by

60 the carrier for failure of consideration to be paid by the
61 policyholder or for refusal to comply with a premium audit
62 is effective after ten days advance written notice of
63 cancellation to the policyholder.

64 (f) Every private carrier shall notify the Insurance
65 Commissioner as follows: (1) Of the issuance or renewal of
66 insurance coverage, within thirty days of (A) the effective
67 date of coverage, or (B) the private carrier's receipt of notice
68 of the employer's operations in this state, whichever is later;
69 (2) of a termination of coverage by the private carrier due to
70 refusal to renew or cancellation, at least ten days prior to the
71 effective date of the termination; and (3) of a termination of
72 coverage by an employer, within ten days of the private
73 carrier's receipt of the employer's request for such
74 termination; the notifications shall be on forms developed or
75 in a manner prescribed by the Insurance Commissioner.

76 (g) For the purposes of subsections (e) and (f) of this
77 section, the transfer of a policyholder between insurance
78 companies within the same group is not considered a
79 cancellation or refusal to renew a workers' compensation
80 insurance policy.

§23-2C-17. Administration of a competitive system.

1 (a) Every policy of insurance issued by a private carrier:

2 (1) Shall be in writing;

3 (2) Shall contain the insuring agreements and exclusions;
4 and

5 (3) If it contains a provision inconsistent with this
6 chapter, it shall be deemed to be reformed to conform with
7 this chapter.

8 (b) The Industrial Council shall promulgate a rule which
9 prescribes the requirements of a basic policy to be used by
10 private carriers.

11 (c) A private carrier or self-insured employer may enter
12 into a contract to have its plan of insurance administered by
13 a third-party administrator if the administrator is licensed or
14 registered with the Insurance Commissioner in accordance
15 with article forty-six, chapter thirty-three of the code.
16 Notwithstanding any other provision of this code to the
17 contrary, any third-party administrator who, directly or
18 indirectly, underwrites or collects charges or premiums from,
19 or adjusts or settles claims on residents of this state, in
20 connection with workers' compensation coverage offered or
21 provided by an insurer, is subject to the provisions of article
22 forty-six, chapter thirty-three of this code to the same extent
23 as those persons included in the definition set forth in
24 subsection (a), section two of said article. The Insurance
25 Commissioner shall propose rules, as provided in section
26 five, article two-c of this chapter, to regulate the use of third-
27 party administrators by private carriers and self-insured
28 employers, including rules setting forth mandatory provisions
29 for agreements between third-party administrators and
30 self-insured employers or private carriers.

31 (d) A self-insured employer or a private carrier may:

32 (1) Enter into a contract or contracts with one or more
33 organizations for managed care to provide comprehensive
34 medical and health care services to employees for injuries
35 and diseases that are compensable pursuant to chapter
36 twenty-three of this code. The managed care plan must be
37 approved pursuant to the provisions of section three, article
38 four of this chapter.

39 (2) Require employees to obtain medical and health care
40 services for their industrial injuries from those organizations
41 and persons with whom the self-insured employer, or private

42 carrier has contracted or as the self-insured employer or
43 private carrier otherwise prescribes.

44 (3) Except for emergency care, require employees to
45 obtain the approval of the self-insured employer or private
46 carrier before obtaining medical and health care services for
47 their industrial injuries from a provider of health care who
48 has not been previously approved by the self-insured
49 employer or private carrier.

50 (e) A private carrier or self-insured employer may inquire
51 about and request medical records of an injured employee
52 that concern a preexisting medical condition that is
53 reasonably related to the industrial injury of that injured
54 employee.

55 (f) An injured employee must sign all medical releases
56 necessary for the insurer of his or her employer to obtain
57 information and records about a preexisting medical
58 condition that is reasonably related to the industrial injury of
59 the employee and that will assist the insurer to determine the
60 nature and amount of workers' compensation to which the
61 employee is entitled.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-7b. Trial return to work; Insurance Commissioner to develop rules.

1 (a) The Legislature hereby finds and declares that it is in
2 the interest of employees and employers that injured
3 employees be encouraged to return to work as quickly as
4 possible after an injury and that appropriate protections be
5 afforded to injured employees who return to work on a trial
6 basis.

7 (b) The Insurance Commissioner shall propose rules, as
8 provided in section five, article two-c of this chapter,

9 establishing criteria for providing employers the option of
10 allowing employees, following an injury, to return to work on
11 a trial basis and for the suspension of temporary total benefits
12 during a period of trial return to work.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

§23-5-11. Workers' Compensation Board of Review generally.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

1 (a) The Insurance Commissioner, private carriers and
2 self-insured employers may determine all questions within
3 their jurisdiction. In matters arising under articles three and
4 four of this chapter, the Insurance Commissioner private
5 carriers and self-insured employers shall promptly review
6 and investigate all claims. The parties to a claim are the
7 claimant and, if applicable, the claimant's dependants, and
8 the employer, and with respect to claims involving funds
9 created in article two-c of this chapter for which he or she has
10 been designated the administrator, the Insurance
11 Commissioner. In claims in which the employer had
12 coverage on the date of the injury or last exposure, the
13 employer's carrier has sole authority to act on the employer's
14 behalf in all aspects related to litigation of the claim. With
15 regard to any issue which is ready for a decision, the
16 Insurance Commissioner, private carrier or self-insured
17 employer, whichever is applicable, shall promptly send the
18 decision to all parties, including the basis of its decision. As
19 soon as practicable after receipt of the claim, but in no event
20 later than the date of the initial decision on the claim, the
21 Insurance Commissioner, private carrier or self-insured
22 employer, whichever is applicable, shall send the claimant a
23 brochure approved by the Insurance Commissioner setting
24 forth the claims process.

25 (b)(1) Except with regard to interlocutory matters, upon
26 making any decision, upon making or refusing to make any
27 award or upon making any modification or change with
28 respect to former findings or orders, as provided by section
29 sixteen, article four of this chapter, the Insurance
30 Commissioner, private carrier or self-insured employer,
31 whichever is applicable, shall give notice, in writing, to the
32 parties to the claim of its action. The notice shall state the
33 time allowed for filing a protest to the finding. The action of
34 the Insurance Commissioner, private carrier or self-insured
35 employer, whichever is applicable, is final unless the decision
36 is protested within sixty days after the receipt of such
37 decision, unless a protest is filed within the-sixty-day period,
38 the finding or action is final. This time limitation is a
39 condition of the right to litigate the finding or action and
40 hence jurisdictional. Any protest shall be filed with the
41 Office of Judges with a copy served upon the parties to the
42 claim, and other parties in accordance with the procedures set
43 forth in sections eight and nine of this article. An employer
44 may protest decisions incorporating findings made by the
45 Occupational Pneumoconiosis Board, decisions made by the
46 Insurance Commissioner acting as administrator of claims
47 involving funds created in article two-c of this chapter, or
48 decisions entered pursuant to subdivision (1), subsection (c),
49 section seven-a, article four of this chapter.

50 (2)(A) With respect to every application for benefits filed
51 on or after the first day of July, two thousand eight, in which
52 a decision to deny benefits is protested and the only
53 controversy relating to compensability is whether the
54 application was properly filed as a new claim or a reopening
55 of a previous claim, the party that denied the application shall
56 begin to make conditional payment of benefits and must
57 promptly give notice to the office of judges that another
58 identifiable person may be liable. The office of judges shall
59 promptly order the appropriate persons be joined as parties to
60 the proceeding: *Provided*, That at any time during a
61 proceeding in which conditional payments are being made in

62 accordance with the provisions of this subsection, the office
63 of judges may, pending final determination of the person
64 properly liable for payment of the claim, order that such
65 conditional payments of benefits be paid by another party.

66 (B) Any conditional payment made pursuant to paragraph
67 (A) of this subdivision shall not be deemed an admission or
68 conclusive finding of liability of the person making such
69 payments. When the administrative law judge has made a
70 determination as to the party properly liable for payment of
71 the claim, he or she shall direct any monetary adjustment or
72 reimbursement between or among the Insurance
73 Commissioner, private carriers and self-insured employers as
74 is necessary.

75 (C) The office of judges may direct that:

76 (i) An application for benefits be designated as a petition
77 to reopen, effective as of the original date of filing;

78 (ii) A petition to reopen be designated as an application
79 for benefits, effective as of the original date of filing; or

80 (iii) An application for benefits or petition to reopen filed
81 with the Insurance Commissioner, private carrier or
82 self-insured employer be designated as an application or
83 petition to reopen filed with another private carrier,
84 self-insured employer or Insurance Commissioner.

85 (c) Where an employer protests a written decision entered
86 pursuant to a finding of the Occupational Pneumoconiosis
87 Board, a decision on a claim made by the Insurance
88 Commissioner acting as the administrator of a fund created
89 in article two-c of this chapter, or decisions entered pursuant
90 to subdivision (1), subsection (c), section seven-a, article four
91 of this chapter, and the employer does not prevail in its
92 protest, and in the event the claimant is required to attend a
93 hearing by subpoena or agreement of counsel or at the

94 express direction of the office of judges, then the claimant in
95 addition to reasonable traveling and other expenses shall be
96 reimbursed for loss of wages incurred by the claimant in
97 attending the hearing.

98 (d) The Insurance Commissioner, private carrier or
99 self-insured employer, whichever is applicable may amend,
100 correct or set aside any order or decision on any issue entered
101 by it which, at the time of issuance or any time after that, is
102 discovered to be defective or clearly erroneous or the result
103 of mistake, clerical error or fraud, or with respect to any
104 order or decision denying benefits, otherwise not supported
105 by the evidence, but any protest filed prior to entry of the
106 amended decision is a protest from the amended decision
107 unless and until the administrative law judge before whom
108 the matter is pending enters an order dismissing the protest as
109 moot in light of the amendment. Jurisdiction to issue an
110 amended decision pursuant to this subsection continues until
111 the expiration of two years from the date of a decision to
112 which the amendment is made unless the decision is sooner
113 affected by an action of an administrative law judge or other
114 judicial officer or body: *Provided*, That corrective actions in
115 the case of fraud may be taken at any time.

§23-5-11. Workers' Compensation Board of Review generally.

1 (a) On the thirty-first day of January, two thousand four,
2 the Workers' Compensation Appeal Board heretofore
3 established in this section is hereby abolished.

4 (b) There is created the "Workers' Compensation Board
5 of Review", which may also be referred to as "the Board of
6 Review" or "the board". Effective the first day of February,
7 two thousand four, the Board of Review shall exercise
8 exclusive jurisdiction over all appeals from the Workers'
9 Compensation Office of Judges including any and all appeals
10 pending with the Board of Appeals on the thirty-first day of
11 January, two thousand four.

12 (c) The board consists of three members.

13 (d) The Governor shall appoint, from names submitted by
14 the "Workers' Compensation Board of Review Nominating
15 Committee", with the advice and consent of the Senate, three
16 qualified attorneys to serve as members of the Board of
17 Review. If the Governor does not select a nominee for any
18 vacant position from the names provided by the nominating
19 committee, he shall notify the nominating committee of that
20 circumstance and the committee shall provide additional
21 names for consideration by the Governor. A member of the
22 Board of Review may be removed by the Governor for
23 official misconduct, incompetence, neglect of duty, gross
24 immorality or malfeasance and then only after notice and
25 opportunity to respond and present evidence. No more than
26 two of the members of the board may be of the same political
27 party. The members of the Board of Review shall be paid an
28 annual salary of eighty-five thousand dollars: *Provided*, That
29 on and after the first day of July, two thousand eight the
30 Governor shall set the salary of the members of the board:
31 *Provided, however*, That the annual salary of a member of the
32 Board of Review shall not exceed one hundred ten thousand
33 dollars. Members are entitled to be reimbursed for actual and
34 necessary travel expenses incurred in the discharge of official
35 duties in a manner consistent with the guidelines of the
36 Travel Management Office of the Department of
37 Administration.

38 (e) The nominating committee consists of the following
39 members: (1) The President of the West Virginia State Bar
40 who serves as the chairperson of the committee; (2) an active
41 member of the West Virginia State Bar Workers'
42 Compensation Committee selected by the major trade
43 association representing employers in this state; (3) an active
44 member of the West Virginia State Bar Workers'
45 Compensation Committee selected by the highest ranking
46 officer of the major employee organization representing

47 workers in this state; (4) the Dean of the West Virginia
48 University School of Law; and (5) the Chairman of the
49 Judicial Investigation Committee.

50 (f) The nominating committee is responsible for
51 reviewing and evaluating candidates for possible appointment
52 to the Board of Review by the Governor. In reviewing
53 candidates, the nominating committee may accept comments
54 from and request information from any person or source.

55 (g) Each member of the nominating committee may
56 submit up to three names of qualified candidates for each
57 position on the Board of Review: *Provided*, That the
58 member of the nominating committee selected by the major
59 trade organization representing employers of this state shall
60 submit at least one name of a qualified candidate for each
61 position on the board who either is, or who represents, small
62 business employers of this state. After careful review of the
63 candidates, the committee shall select a minimum of one
64 candidate for each position on the board.

65 (h) Of the initial appointments, one member shall be
66 appointed for a term ending the thirty-first day of December,
67 two thousand six; one member shall be appointed for a term
68 ending the thirty-first day of December, two thousand eight;
69 and one member shall be appointed for a term ending the
70 thirty-first day of December, two thousand ten. Thereafter,
71 The appointments shall be for six-year terms.

72 (i) A member of the Board of Review must, at the time he
73 or she takes office and thereafter during his or her
74 continuance in office, be a resident of this state, be a member
75 in good standing of the West Virginia State Bar, have a
76 minimum of ten years' experience as an attorney admitted to
77 practice law in this state prior to appointment and have a
78 minimum of five years' experience in preparing and
79 presenting cases or hearing actions and making decisions on

80 the basis of the record of those hearings before administrative
81 agencies, regulatory bodies or courts of record at the federal,
82 state or local level.

83 (j) No member of the Board of Review may hold any
84 other office, or accept any appointment or public trust, nor
85 may he or she become a candidate for any elective public
86 office or nomination thereto. Violation of this subsection
87 requires the member to vacate his or her office. No member
88 of the Board of Review may engage in the practice of law
89 during his or her term of office.

90 (k) A vacancy occurring on the board other than by
91 expiration of a term shall be filled in the manner original
92 appointments were made, for the unexpired portion of the
93 term.

94 (l) The board shall designate one of its members in
95 rotation to be chairman of the board for as long as the board
96 may determine by order made and entered of record. In the
97 absence of the chairman, any other member designated by the
98 members present shall act as chairman.

99 (m) The Board of Review shall meet as often as
100 necessary to hold review hearings, at such times and places
101 as the chairman may determine. Two members shall be
102 present in order to conduct review hearings or other business.
103 All decisions of the board shall be determined by a majority
104 of the members of the board.

105 (n) The Board of Review shall make general rules
106 regarding the pleading, including the form of the petition and
107 any responsive pleadings, practice and procedure to be used
108 by the board.

109 (o) The Board of Review may hire a clerk and other
110 professional and clerical staff necessary to carry out the

111 requirements of this article. It is the duty of the clerk of the
112 Board of Review to attend in person, or by deputy, all the
113 sessions of the board, to obey its orders and directions, to
114 take care of and preserve in an office, kept for the purpose,
115 all records and papers of the board and to perform other
116 duties as prescribed by law or required of him or her by the
117 board. All employees of the board serve at the will and
118 pleasure of the board. The board's employees are exempt
119 from the salary schedule or pay plan adopted by the Division
120 of Personnel. All personnel of the Board of Review are
121 under the supervision of the chairman of the Board of
122 Review.

123 (p) If considered necessary by the board, the board may,
124 through staffing or other resources, procure assistance in
125 review of medical portions of decisions.

126 (q) Upon the conclusion of any hearing, or prior thereto
127 with concurrence of the parties, the board shall promptly
128 determine the matter and make an award in accordance with
129 its determination.

130 (r) The award shall become a part of the commission file.
131 A copy of the award shall be sent forthwith by mail to all
132 parties in interest.

133 (s) The award is final when entered. The award shall
134 contain a statement explaining the rights of the parties to an
135 appeal to the Board of Review and the applicable time
136 limitations involved.

137 (t) The board shall submit to the Insurance Commissioner
138 a budget sufficient to adequately provide for the
139 administrative and other operating expenses of the board.

140 (u) The board shall report monthly to the Industrial
141 Council on the status of all claims on appeal.

142 (v) Effective upon termination of the commission, the
143 Board of Review shall be transferred to the Insurance
144 Commissioner which shall have the oversight and
145 administrative authority heretofore provided to the executive
146 director and the board of managers.

CHAPTER 230

**(Com. Sub. for S.B. 571 - By Senators Jenkins, Plymale, Deem,
Minard, Green, Hall, Hunter, Foster, Kessler, Stollings and Yoder)**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to creating a rebuttable presumption that cardiovascular injury, disease or death or pulmonary disease or death of a professional firefighter is an occupational injury if certain criteria are met; providing that sufficient notice of occupational injury, disease or death has been provided under such circumstances; establishing presumption that death or injury was not self inflicted; and requiring the Insurance Commissioner conduct a study and report back to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §23-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in “injury” and “personal injury”; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

1 (a) Subject to the provisions and limitations elsewhere in
2 this chapter, workers' compensation benefits shall be paid the
3 Workers' Compensation Fund, to the employees of
4 employers subject to this chapter who have received personal
5 injuries in the course of and resulting from their covered
6 employment or to the dependents, if any, of the employees in
7 case death has ensued, according to the provisions hereinafter
8 made: *Provided*, That in the case of any employees of the
9 state and its political subdivisions, including: Counties;
10 municipalities; cities; towns; any separate corporation or
11 instrumentality established by one or more counties, cities or
12 towns as permitted by law; any corporation or instrumentality
13 supported in most part by counties, cities or towns; any
14 public corporation charged by law with the performance of a
15 governmental function and whose jurisdiction is coextensive
16 with one or more counties, cities or towns; any agency or
17 organization established by the Department of Mental Health
18 for the provision of community health or mental retardation
19 services and which is supported, in whole or in part, by state,
20 county or municipal funds; board, agency, commission,
21 department or spending unit, including any agency created by
22 rule of the Supreme Court of Appeals, who have received
23 personal injuries in the course of and resulting from their
24 covered employment, the employees are ineligible to receive
25 compensation while the employees are at the same time and
26 for the same reason drawing sick leave benefits. The state
27 employees may only use sick leave for nonjob-related
28 absences consistent with sick leave use and may draw
29 workers' compensation benefits only where there is a job-

30 related injury. This proviso shall not apply to permanent
31 benefits: *Provided, however*, That the employees may collect
32 sick leave benefits until receiving temporary total disability
33 benefits. The Division of Personnel shall promulgate rules
34 pursuant to article three, chapter twenty-nine-a of this code
35 relating to use of sick leave benefits by employees receiving
36 personal injuries in the course of and resulting from covered
37 employment: *Provided further*, That in the event an
38 employee is injured in the course of and resulting from
39 covered employment and the injury results in lost time from
40 work and the employee for whatever reason uses or obtains
41 sick leave benefits and subsequently receives temporary total
42 disability benefits for the same time period, the employee
43 may be restored sick leave time taken by him or her as a
44 result of the compensable injury by paying to his or her
45 employer the temporary total disability benefits received or
46 an amount equal to the temporary total disability benefits
47 received. The employee shall be restored sick leave time on
48 a day-for-day basis which corresponds to temporary total
49 disability benefits paid to the employer: *And provided*
50 *further*, That since the intent of this subsection is to prevent
51 an employee of the state or any of its political subdivisions
52 from collecting both temporary total disability benefits and
53 sick leave benefits for the same time period, nothing in this
54 subsection prevents an employee of the state or any of its
55 political subdivisions from electing to receive either sick
56 leave benefits or temporary total disability benefits, but not
57 both.

58 (b) For the purposes of this chapter, the terms "injury"
59 and "personal injury" include occupational pneumoconiosis
60 and any other occupational disease, as hereinafter defined,
61 and workers' compensation benefits shall be paid to the
62 employees of the employers in whose employment the
63 employees have been exposed to the hazards of occupational
64 pneumoconiosis or other occupational disease and in this
65 state have contracted occupational pneumoconiosis or other

66 occupational disease, or have suffered a perceptible
67 aggravation of an existing pneumoconiosis or other
68 occupational disease, or to the dependents, if any, of the
69 employees, in case death has ensued, according to the
70 provisions hereinafter made: *Provided*, That compensation
71 shall not be payable for the disease of occupational
72 pneumoconiosis, or death resulting from the disease, unless
73 the employee has been exposed to the hazards of
74 occupational pneumoconiosis in the State of West Virginia
75 over a continuous period of not less than two years during the
76 ten years immediately preceding the date of his or her last
77 exposure to such hazards, or for any five of the fifteen years
78 immediately preceding the date of his or her last exposure.
79 An application for benefits on account of occupational
80 pneumoconiosis shall set forth the name of the employer or
81 employers and the time worked for each. The commission
82 may allocate to and divide any charges resulting from such
83 claim among the employers by whom the claimant was
84 employed for as much as sixty days during the period of three
85 years immediately preceding the date of last exposure to the
86 hazards of occupational pneumoconiosis. The allocation
87 shall be based upon the time and degree of exposure with
88 each employer.

89 (c) For the purposes of this chapter, disability or death
90 resulting from occupational pneumoconiosis, as defined in
91 subsection (d) of this section, shall be treated and
92 compensated as an injury by accident.

93 (d) Occupational pneumoconiosis is a disease of the
94 lungs caused by the inhalation of minute particles of dust
95 over a period of time due to causes and conditions arising out
96 of and in the course of the employment. The term
97 "occupational pneumoconiosis" includes, but is not limited
98 to, such diseases as silicosis, anthracosilicosis, coal worker's
99 pneumoconiosis, commonly known as black lung or miner's
100 asthma, silico-tuberculosis (silicosis accompanied by active

101 tuberculosis of the lungs), coal worker's pneumoconiosis
102 accompanied by active tuberculosis of the lungs, asbestosis,
103 siderosis, anthrax and any and all other dust diseases of the
104 lungs and conditions and diseases caused by occupational
105 pneumoconiosis which are not specifically designated in this
106 section meeting the definition of occupational
107 pneumoconiosis set forth in this subsection.

108 (e) In determining the presence of occupational
109 pneumoconiosis, X-ray evidence may be considered, but
110 shall not be accorded greater weight than any other type of
111 evidence demonstrating occupational pneumoconiosis.

112 (f) For the purposes of this chapter, occupational disease
113 means a disease incurred in the course of and resulting from
114 employment. No ordinary disease of life to which the
115 general public is exposed outside of the employment is
116 compensable except when it follows as an incident of
117 occupational disease as defined in this chapter. Except in the
118 case of occupational pneumoconiosis, a disease shall be
119 considered to have been incurred in the course of or to have
120 resulted from the employment only if it is apparent to the
121 rational mind, upon consideration of all the circumstances:
122 (1) That there is a direct causal connection between the
123 conditions under which work is performed and the
124 occupational disease; (2) that it can be seen to have followed
125 as a natural incident of the work as a result of the exposure
126 occasioned by the nature of the employment; (3) that it can
127 be fairly traced to the employment as the proximate cause;
128 (4) that it does not come from a hazard to which workmen
129 would have been equally exposed outside of the employment;
130 (5) that it is incidental to the character of the business and not
131 independent of the relation of employer and employee; and
132 (6) that it appears to have had its origin in a risk connected
133 with the employment and to have flowed from that source as
134 a natural consequence, though it need not have been foreseen

135 or expected before its contraction: *Provided*, That
136 compensation shall not be payable for an occupational
137 disease or death resulting from the disease unless the
138 employee has been exposed to the hazards of the disease in
139 the State of West Virginia over a continuous period that is
140 determined to be sufficient, by rule of the board of managers,
141 for the disease to have occurred in the course of and resulting
142 from the employee's employment. An application for
143 benefits on account of an occupational disease shall set forth
144 the name of the employer or employers and the time worked
145 for each. The commission may allocate to and divide any
146 charges resulting from such claim among the employers by
147 whom the claimant was employed. The allocation shall be
148 based upon the time and degree of exposure with each
149 employer.

150 (g) No award shall be made under the provisions of this
151 chapter for any occupational disease contracted prior to the
152 first day of July, one thousand nine hundred forty-nine. An
153 employee shall be considered to have contracted an
154 occupational disease within the meaning of this subsection if
155 the disease or condition has developed to such an extent that
156 it can be diagnosed as an occupational disease.

157 (h) (1) For purposes of this chapter, a rebuttable
158 presumption that a professional firefighter who has
159 developed a cardiovascular or pulmonary disease or sustained
160 a cardiovascular injury has received an injury or contracted
161 a disease arising out of and in the course of his or her
162 employment exists if: (i) The person has been actively
163 employed by a fire department as a professional firefighter
164 for a minimum of two years prior to the cardiovascular injury
165 or onset of a cardiovascular or pulmonary disease or death;
166 and (ii) the injury or onset of the disease or death occurred
167 within six months of having participated in firefighting or a
168 training or drill exercise which actually involved firefighting.

169 When the above conditions are met, it shall be presumed that
170 sufficient notice of the injury, disease or death has been given
171 and that the injury, disease or death was not self inflicted.

172 (2) The Insurance Commissioner shall study the effects
173 of the rebuttable presumptions created in this subsection on
174 the premiums charged for workers' compensation for
175 professional municipal firefighters; the probable effects of
176 extending these presumptions to volunteer firefighters; and
177 the overall impact of the risk management programs, wage
178 replacement, premium calculation, the number of hours
179 worked per volunteer, treatment of nonactive or "social"
180 members of a volunteer crew and the feasibility of combining
181 various volunteer departments under a single policy on the
182 availability and cost of providing workers' compensation
183 coverage to volunteer firefighters. The Insurance
184 Commissioner shall file the report with the Joint Committee
185 on Government and Finance no later than the first day of
186 December, two thousand eight.

187 (i) Claims for occupational disease as defined in
188 subsection (f) of this section, except occupational
189 pneumoconiosis for all workers and pulmonary disease and
190 cardiovascular injury and disease for professional
191 firefighters, shall be processed in like manner as claims for
192 all other personal injuries.

193 (j) On or before the first day of January, two thousand
194 four, the Workers' Compensation Commission shall adopt
195 standards for the evaluation of claimants and the
196 determination of a claimant's degree of whole-body medical
197 impairment in claims of carpal tunnel syndrome.

CHAPTER 231

**(Com. Sub. for H.B. 4511 - By Delegates Wysong, Tabb, Blair,
J. Miller, Cowles, Michael, Duke, Williams, Barker, Shaver
and Long)**

[Passed March 7, 2008; in effect from passage.]
[Approved by the Governor on March 28, 2008.]

AN ACT to amend and reenact §8A-7-7, §8A-7-8 and §8A-7-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8A-7-8a, all relating to zoning ordinances; reducing the threshold for triggering a zoning ordinance election by petition; setting forth procedures for amending a zoning ordinance; requirements for adopting an amendment to a zoning ordinance; requiring specific notice requirements to affected owners of affected parcels when a proposed zoning ordinance modification would change the zoning classification of a parcel of land; clarifying the relevant notice and adoption procedures as they pertain to adoption or modification of a nontraditional zoning ordinance.

Be it enacted by the Legislature of West Virginia:

That §8A-7-7, §8A-7-8 and §8A-7-13 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 §8A-7-8a, all to read as follows:

ARTICLE 7. ZONING ORDINANCE.

§8A-7-7. Election on a zoning ordinance.

§8A-7-8. Amendments to the zoning ordinance by the governing body.

§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

§8A-7-13. Process to replace nontraditional zoning ordinance.

§8A-7-7. Election on a zoning ordinance.

1 (a) The governing body of a municipality or a county
2 may submit a proposed zoning ordinance for approval or
3 rejection at any primary election, general election or special
4 election, to the qualified voters residing:

5 (1) Within the entire jurisdiction of the governing body,
6 if the proposed zoning ordinance is for the entire jurisdiction;
7 or

8 (2) In the specific area to be zoned by the proposed
9 zoning ordinance, if the proposed zoning ordinance only
10 applies to part of the governing body's jurisdiction.

11 (b) The election laws of this state apply to any election on
12 a proposed zoning ordinance.

13 (c) If a petition for an election on a zoning ordinance is
14 filed with the clerk of a governing body within ninety days
15 after the enactment of a zoning ordinance by a governing
16 body without an election, then a zoning ordinance does not
17 take effect until an election is held and a majority of the
18 voters approves it. At least ten percent of the total eligible
19 voters in the area to be affected by the proposed zoning
20 ordinance must sign, in their own handwriting, the petition
21 for an election on a zoning ordinance.

22 (d) Notice for an election on a proposed zoning ordinance
23 must be published in a local newspaper of general circulation
24 in the area affected by the proposed zoning ordinance, as a
25 Class II-0 legal advertisement, in accordance with the
26 provisions of article three, chapter fifty-nine of this code.

27 (e) The ballots for an election on a zoning ordinance shall
28 have the following:

29 // For Zoning

30 // Against Zoning

31 (f) The zoning ordinance is adopted if it is approved by
32 a majority of the voters and is effective on the date the results
33 of an election are declared. If a zoning ordinance is rejected,
34 the zoning ordinance does not take effect. The governing
35 body may submit the zoning ordinance to the voters again at
36 the next primary or general election.

§8A-7-8. Amendments to the zoning ordinance by the governing body.

1 (a) Before amending the zoning ordinance, the governing
2 body with the advice of the planning commission, must find
3 that the amendment is consistent with the adopted
4 comprehensive plan. If the amendment is inconsistent, then
5 the governing body with the advice of the planning
6 commission, must find that there have been major changes of
7 an economic, physical or social nature within the area
8 involved which were not anticipated when the comprehensive
9 plan was adopted and those changes have substantially
10 altered the basic characteristics of the area.

11 (b) When a proposed amendment to the zoning ordinance
12 involves a change in the zoning map classification of any
13 parcel of land, or a change to the applicable zoning ordinance
14 text regulations that changes the allowed dwelling unit
15 density of any parcel of land, the governing body shall, at
16 least thirty days prior to the enactment of the proposed
17 amendment if there is not an election, or at least thirty days
18 prior to an election on the proposed amendment to the zoning
19 ordinance:

20 (1) Give written notice by certified mail to the
21 landowner(s) whose property is directly involved in the
22 proposed amendment to the zoning ordinance; and

23 (2) Publish notice of the proposed amendment to the
24 zoning ordinance in a local newspaper of general circulation
25 in the area affected by the zoning ordinance, as a Class II-0
26 legal advertisement, in accordance with the provisions of
27 article three, chapter fifty-nine of this code.

**§8A-7-8a. Requirements for adopting an amendment to the
zoning ordinance.**

1 (a) After the enactment of the zoning ordinance, the
2 governing body of the municipality may amend the zoning
3 ordinance in accordance with section eight of this article,
4 without holding an election.

5 (b) After the enactment of the zoning ordinance, the
6 governing body of the county may amend the zoning
7 ordinance in accordance with section eight of this article, as
8 follows:

9 (1) Without holding an election;

10 (2) Holding an election on the proposed amendment; or

11 (3) Holding an election on the proposed amendment
12 pursuant to a petition.

13 (c) If the governing body of the county chooses to hold
14 an election on the proposed amendment, then it must:

15 (1) Publish notice of the election and the proposed
16 amendment to the zoning ordinance in a local newspaper of
17 general circulation in the area affected by the zoning
18 ordinance, as a Class II-0 legal advertisement, in accordance
19 with the provisions of article three, chapter fifty-nine of this
20 code; and

21 (2) Hold an election on the question of adopting or
22 rejecting the proposed amendment to the zoning ordinance at
23 any primary, general or special election for the qualified
24 voters residing in:

25 (A) The entire jurisdiction of the county, if the zoning
26 ordinance applies to the entire county; or

27 (B) The specific area to which the zoning ordinance
28 applies, if the zoning ordinance only applies to a part of the
29 county.

30 (d) The governing body of a county must hold an election
31 on an amendment to a zoning ordinance if a petition, signed
32 by at least ten percent of the eligible voters in the area to
33 which the zoning ordinance applies, is filed:

34 (1) With the governing body of the county prior to
35 enactment of an amendment to a zoning ordinance; or

36 (2) After the enactment of an amendment to a zoning
37 ordinance without an election, if the petition for an election
38 on the amendment to a zoning ordinance is filed with the
39 governing body of the county within ninety days.

40 (e) The governing body of the county holding an election
41 on the proposed amendment pursuant to a petition must:

42 (1) Publish notice of the election and the proposed
43 amendment to the zoning ordinance in a local newspaper of
44 general circulation in the area affected by the zoning
45 ordinance, as a Class II-0 legal advertisement, in accordance
46 with the provisions of article three, chapter fifty-nine of this
47 code; and

48 (2) Hold an election on the question of adopting or
49 rejecting the proposed amendment to the zoning ordinance at

50 any primary, general or special election for the qualified
51 voters residing in:

52 (A) The entire jurisdiction of the county, if the zoning
53 ordinance applies to the entire county; or

54 (B) The specific area to which the zoning ordinance
55 applies, if the zoning ordinance only applies to a part of the
56 county.

57 (f) If an election is held, then the proposed amendment to
58 the zoning ordinance does not take effect until a majority of
59 the voters approve it.

60 (g) If an election is held and the proposed amendment to
61 the zoning ordinance is rejected, then the proposed
62 amendment does not take effect. The governing body of the
63 county may resubmit the proposed amendment to the zoning
64 ordinance to the voters at another election.

65 (h) A special election may be held upon written request
66 to the governing body of the county.

67 (i) The election laws of this state apply to any election on
68 a proposed amendment to a zoning ordinance.

§8A-7-13. Process to replace nontraditional zoning ordinance.

1 (a) A governing body that has adopted or enacted a
2 nontraditional zoning ordinance may replace the
3 nontraditional zoning ordinance with a zoning ordinance. A
4 nontraditional zoning ordinance may be replaced with a
5 zoning ordinance by:

6 (1) The governing body; or

7 (2) A petition by the voters in the affected area. If the
8 voters petition to replace the nontraditional zoning ordinance

9 with a zoning ordinance, then the provisions of this section
10 and this chapter shall be followed.

11 (b) At least ten percent of the total eligible voters in the
12 affected area may petition the governing body to replace the
13 nontraditional zoning ordinance with a zoning ordinance.
14 The petition must include:

15 (1) The governing body's name to which the petition is
16 addressed;

17 (2) The reason for the petition, including:

18 (A) Replacing the nontraditional zoning ordinance with
19 a zoning ordinance; and

20 (B) That the question of replacing the nontraditional
21 zoning ordinance with a new zoning ordinance be put to the
22 voters of the affected area; and

23 (3) Signatures in ink or permanent marker.

24 (c) Each person signing the petition must be a registered
25 voter in the affected area and in the governing body's
26 jurisdiction. The petition must be delivered to the clerk of
27 the affected governing body. There are no time constraints
28 on the petition.

29 (d) Upon receipt of the petition with the required number
30 of qualifying signatures, the governing body shall place the
31 question on the next special, primary or general election
32 ballot.

33 Notice for an election on replacing a zoning ordinance
34 must be published in a local newspaper of general circulation
35 in the area affected by the nontraditional zoning ordinance,

36 as a Class II-0 legal advertisement, in accordance with the
37 provisions of article three, chapter fifty-nine of this code.

38 (e) The ballots for an election on replacing a zoning
39 ordinance shall have the following:

40 “Shall _____ (name of governing body) replace
41 _____ (name of commonly known nontraditional zoning
42 ordinance) with a zoning ordinance?”

43 _____ Yes _____ No”

44 (f) Upon a majority vote of the voters voting in favor of
45 replacing a nontraditional zoning ordinance with a zoning
46 ordinance, the governing body shall immediately begin the
47 process of adopting and enacting a zoning ordinance, in
48 accordance with the provisions of chapter eight-a of this
49 code. The governing body has a maximum of three years
50 from the date of the election to adopt a zoning ordinance.

51 (g) The governing body may amend its nontraditional
52 zoning ordinance during the process of adopting and enacting
53 a zoning ordinance.

54 (h) If a majority of the voters reject replacing the
55 nontraditional zoning ordinance with a zoning ordinance, the
56 affected voters may not petition for a vote on the issue for at
57 least two years from the date of the election.

58 (i) Nothing in this section shall prevent a governing body
59 from amending its zoning ordinance in accordance with this
60 chapter.

61 (j) If a governing body of a county chooses to replace a
62 nontraditional zoning ordinance with a traditional zoning
63 ordinance without holding an election, a petition, signed by
64 at least ten percent of the eligible voters who reside in the

65 area affected by the zoning ordinance, for an election on the
66 question of adopting a traditional zoning ordinance may be
67 filed with the governing body of the county within ninety
68 days after the enactment of the traditional zoning ordinance
69 by the governing body of the county. If a petition is timely
70 filed, then the traditional zoning ordinance does not take
71 effect until:

72 (1) Notice of the election and the zoning ordinance is
73 published in a local newspaper of general circulation in the
74 area affected by the zoning ordinance, as a Class II-0 legal
75 advertisement, in accordance with the provisions of article
76 three, chapter fifty-nine of this code;

77 (2) An election is held; and

78 (3) A majority of the voters approve it.

CHAPTER 232

(Com. Sub. for S.B. 740 - By Senator Unger)

[Passed March 7, 2008; in effect from passage.]

[Approved by the Governor on March 28, 2008.]

AN ACT to reform the county commission of Berkeley County
under the provisions of section thirteen, article IX of the
Constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY COMMISSION.**§1. Legislative findings.**

1 (a) The Legislature finds that:

2 (1) The county commission of Berkeley County
3 submitted a resolution requesting reformation of the county
4 commission pursuant to section thirteen, article IX of the
5 West Virginia Constitution;

6 (2) Berkeley County has experienced growth which has
7 caused the business before the commission to dramatically
8 increase; and

9 (3) Because of this growth, the citizens of the county feel
10 consideration of the county's business should be shared
11 among a greater number of elected officials.

12 (b) Therefore, the Legislature declares that pursuant to
13 the request in the resolution, Berkeley County is authorized
14 to place before the voters of Berkeley County the question of
15 a new tribunal consisting of five members, which tribunal
16 shall be called the Berkeley County Council.

§2. Submission to voters of question of reformation of the county commission; publication.

1 (a) At the general election held on the fourth day of
2 November, two thousand eight, the question of the
3 reformation of the county commission of Berkeley County,
4 as provided in this act, shall be submitted to the voters of
5 Berkeley County on a ballot furnished by the county
6 commission, in the following form:

7 “For increasing the county commission to five
8 members and renaming the commission the Berkeley County
9 Council.”

10 “Against increasing the county commission to five
11 members and renaming the commission the Berkeley County
12 Council.”

13 (b) Notice of the election on the question shall be given
14 by publication of this act in each weekly or daily newspaper
15 as a Class II-0 legal advertisement in compliance with the
16 provisions of article three, chapter fifty-nine of the code in
17 the county at least once in each week for two successive
18 weeks immediately preceding the election.

§3. Election of Berkeley County Council members.

1 (a) At the primary election to be held in the year two
2 thousand ten, persons shall be nominated as members of the
3 Berkeley County Council. The election of the three new
4 council members will be held at the general election
5 scheduled for the first Tuesday in November, two thousand
6 ten.

7 (b) The three new council members shall be elected for
8 staggered terms of two, four and six years respectively. The
9 terms of the newly elected council members will be decided
10 as follows:

11 (1) The six-year term to the newly elected member who
12 received the greatest number of votes;

13 (2) The four-year term to the newly elected member who
14 received the second greatest number of votes; and

15 (3) The two-year term to the newly elected member who
16 received the third greatest number of votes.

17 (c) The other two members of the council shall be those
18 members of the Berkeley County Commission whose terms
19 will not have ended by the first day of January, two thousand
20 eleven. These two members shall serve until their original
21 commission terms expire.

22 (d) After the initial term, each council member serves a
23 six-year term.

24 (e) No two members of the council shall be from the
25 same magisterial district and all members shall be elected
26 from the county at large.

27 (f) The new council shall become effective and the
28 members shall take office on the first day of January, two
29 thousand eleven.

§4. Powers and duties.

1 (a) The new Berkeley County Council has the same
2 powers, duties and responsibilities as a county commission,
3 as provided in the constitution and the general laws of this
4 state.

5 (b) A majority of the members of the council constitutes
6 a quorum.

§5. Elections.

1 The elections set forth in this act shall conform in all
2 respects to the election laws and rules administered by the
3 West Virginia Secretary of State.

CHAPTER 233

(Com. Sub. for S.B. 579 - By Senator Caruth)

[Passed March 3, 2008; in effect from passage.]
[Approved by the Governor on March 10, 2008.]

AN ACT to authorize the governing body of the city of Bluefield to appoint two additional nonresident members to the Bluefield Sanitary Board.

Be it enacted by the Legislature of West Virginia:

BLUEFIELD SANITARY BOARD.

§1. Legislative findings.

1 (a) The Legislature finds that:

2 (1) The city of Bluefield is in a unique situation in that
3 the state line separates the city from the town of Bluefield,
4 Virginia;

5 (2) The sanitary sewer system serves both the city of
6 Bluefield, West Virginia, and the town of Bluefield, Virginia;

7 (3) Part of the sanitary sewer system serving the city of
8 Bluefield, West Virginia, and the town of Bluefield, Virginia,
9 is located in the town of Bluefield, Virginia;

10 (4) The sanitary board that supervises and controls the
11 sanitary sewer system serving the city of Bluefield, West
12 Virginia and the town of Bluefield, Virginia, was organized
13 by the city of Bluefield, West Virginia, that the two
14 appointed board members are residents of the city of
15 Bluefield, West Virginia; and

16 (5) Residents of the town of Bluefield, Virginia, have no
17 representation in the decisions concerning the sanitary sewer
18 system affecting their town.

19 (b) Therefore, the Legislature declares that since the city
20 of Bluefield is in a unique situation, it is in the public interest
21 that the governing body of the city of Bluefield, West
22 Virginia, be authorized to confirm and appoint two additional
23 nonresident members from the town of Bluefield, Virginia,
24 to the Bluefield Sanitary Board.

§2. Authorizing appointment of nonresident board members.

1 (a) The governing body of the town of Bluefield,
2 Virginia, is authorized to nominate two additional
3 nonresident members to the city of Bluefield Sanitary Board.

4 (b) The two additional nonresident members shall be
5 residents of the town of Bluefield, Virginia.

6 (c) Upon the governing body of the city of Bluefield
7 confirming the nominations, the two additional nonresident
8 members shall serve in accordance with section eighteen,
9 article three, chapter sixteen of the Code of West Virginia.

10 (d) Upon the appointment and confirmation of the said
11 two additional nonresident members, the Bluefield Sanitary
12 Board shall be comprised of the following:

2360 LOCAL - JEFFERSON COUNTY [Ch. 234
13 (1) Two residents of the city of Bluefield, West Virginia;
14 (2) Two residents of the town of Bluefield, Virginia; and
15 (3) The mayor or city manager of the city of Bluefield,
16 West Virginia.

CHAPTER 234

**(Com. Sub. for S.B. 224 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed March 8, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to authorize the county commission of Jefferson County
to create a joint emergency services agency; legislative findings;
and management by a joint emergency services board.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY JOINT EMERGENCY SERVICES AGENCY.

§1. Legislative findings.

- 1 (a) The Legislature finds that:
 - 2 (1) Jefferson County has a demonstrated population
 - 3 growth rate history;

4 (2) Small separate volunteer emergency services agencies
5 cannot adequately serve the people of Jefferson County;

6 (3) The municipalities, communities and the county
7 cannot separately finance individual volunteer emergency
8 services agencies;

9 (4) Jefferson County is in a unique position that it has the
10 only national historical park in the state which attracts
11 thousands of visitors annually;

12 (5) The national historical park with its historical
13 buildings and visitors places an undue burden on the small
14 individual emergency services agencies in Jefferson County;
15 and

16 (6) An agency that combines joint emergency services
17 would enhance Jefferson County's ability to serve its people.

18 (b) Therefore, the Legislature declares that since
19 Jefferson County is in a unique situation, it is in the public
20 interest that the county commission of Jefferson County be
21 authorized to create a joint emergency services agency.

§2. Authorizing creation of the Jefferson County Joint Emergency Services Agency.

1 (a) In lieu of creating both an emergency ambulance
2 service authority and a separate county fire association or
3 county fire board, the county commission of Jefferson
4 County may enact an ordinance creating a combined joint
5 emergency services agency to provide emergency services
6 and emergency response services.

7 (b) The agency shall possess all of the rights and
8 responsibilities conferred upon emergency ambulance service

9 authorities, county fire associations and county fire boards
10 that are not otherwise inconsistent with state law and local
11 ordinance.

§3. Joint Emergency Services Board.

1 (a) By ordinance, the county commission of Jefferson
2 County may create a Joint Emergency Services Board to
3 oversee the management and control of the agency.

4 (b) The board shall consist of at least the following
5 individuals who shall be appointed by the county
6 commission:

7 (1) A representative from an emergency medical service;

8 (2) A representative from a fire protection service; and

9 (3) A citizen member who is not employed with an
10 emergency medical service, a fire protection service or the
11 county commission.

12 (c) All board members shall be residents of Jefferson
13 County.

14 (d) The board members shall serve for staggered terms of
15 three years and are limited to two consecutive terms. In the
16 event of a vacancy, a successor shall be appointed from the
17 same service area as the unexpired representative's term.
18 Members shall continue to serve until their successors have
19 been appointed.

20 (e) A majority of the members of the board constitutes a
21 quorum.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2008

CHAPTER 1

**(H.B. 104 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 16, 2008; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-6, all relating to requiring notice to certain public officials upon commencement of actions on behalf of the state or a government agency thereof; requiring notice prior to settlement of such actions; requiring notice of potential recovery through seizure or forfeiture of assets in certain criminal cases; and providing for statutory construction of the article.

Be it enacted by the Legislature of West Virginia:

That §55-17-1 and §55-17-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §55-17-6, all to read as follows:

**ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS ON
BEHALF OF OR AGAINST THE STATE.**

§55-17-1. Findings; purpose.

§55-17-5. Notice of settlement, seizure or forfeiture.

§55-17-6. Construction of article.

§55-17-1. Findings; purpose.

1 (a) The Legislature finds that there are numerous actions,
2 suits and proceedings filed against state government agencies
3 and officials that may affect the public interest. Depending
4 upon the outcome, this type of litigation may have significant
5 consequences that can only be addressed by subsequent
6 legislative action. In these actions, the Legislature is not
7 directly involved as a party. The Legislature is not a proper
8 party to these actions because of an extensive structure of
9 constitutional protections established to safeguard the
10 prerogatives of the legislative branch under our governmental
11 system of checks and balances. Government agencies and
12 their officials require more notice of these actions and time
13 to respond to them and the Legislature requires more timely
14 information regarding these actions, all in order to protect the
15 public interest. The Legislature further finds that protection
16 of the public interest is best served by clarifying that no
17 government agency may be subject to awards of punitive
18 damages in any judicial proceeding.

19 (b) The Legislature further finds that there are numerous
20 actions, suits and proceedings filed on behalf of the State of
21 West Virginia or a government agency thereof, that may
22 affect the public interest. Depending upon the outcome, this
23 type of litigation may have significant consequences that can
24 only be addressed by subsequent legislative action. In such
25 litigation, the Governor, Department of Administration and
26 the Legislature may not be directly involved as parties.
27 Additionally, the Governor, Department of Administration
28 and the Legislature need advance notice of potential moneys
29 that may become available as a result of seizure or forfeiture

30 of assets under state or federal criminal law. The Governor,
31 Department of Administration and the Legislature require
32 more timely information regarding these actions in order to
33 protect the public interest. The Legislature further finds that
34 protection of the public interest is best served by requiring
35 notice to the Governor, the Secretary of the Department of
36 Administration, the President of the Senate and the Speaker
37 of the House of Delegates of any action brought on behalf of
38 the state or a government agency thereof, which may result
39 in a judgment, award or settlement and when the state or a
40 government agency thereof, becomes eligible for moneys
41 from state or federal seizure or forfeiture of assets in criminal
42 cases.

43 (c) It is the purpose of this article to establish procedures
44 to be followed in certain civil actions filed on behalf of or
45 against state government agencies and their officials.

§55-17-5. Notice of settlement, seizure or forfeiture.

1 (a) So that the Governor, the Department of
2 Administration and the Legislature may be aware of potential
3 awards, the person or entity bringing any action on behalf of
4 the State of West Virginia, or a government agency thereof,
5 which could result in settlement or judgment shall upon
6 commencement of the action and prior to entering into any
7 settlement agreement which directs how the money should be
8 expended, notify and provide copies of pleadings and related
9 documents to the Governor, the Secretary of the Department
10 of Administration, the President of the Senate and the
11 Speaker of the House of Delegates.

12 (b) When a government agency becomes aware that
13 moneys may be available to them from a state or federal
14 seizure or forfeiture in a criminal case they shall notify the
15 Governor, the Secretary of the Department of Administration,
16 the President of the Senate and the Speaker of the House of

17 Delegates: *Provided*, That the total value of the assets to be
18 seized or forfeited exceeds two hundred and fifty thousand
19 dollars.

§55-17-6. Construction of article.

1 (a) It is the express intent of the Legislature that the
2 provisions of this article be liberally construed to effectuate
3 the public policy set forth in section one of this article.

4 (b) The provisions of this article may not be construed to
5 impose any liability upon a state agency from which the
6 agency is otherwise immune.

CHAPTER 2

**(S.B. 1006 - By Senators Helmick, Sharpe, Plymale, Chafin,
Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger,
Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)**

[Passed March 16, 2008; in effect from passage.]

[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the West Virginia Conservation Agency, fund 0132, fiscal year 2008, organization 1400, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2008, organization 0205, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year

2008, organization 0307, to the Department of Commerce - WORKFORCE West Virginia, fund 0572, fiscal year 2008, organization 0323, to the Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2008, organization 0431, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2008, organization 0511, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2008, organization 0608, and to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2008, organization 0441, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor's statement of the State Fund - General Revenue there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0132, fiscal year 2008, organization 1400, be supplemented and amended and by increasing an existing item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations of General Revenue.**

3 **EXECUTIVE**

4 *11--West Virginia Conservation Agency*

5 (WV Code Chapter 19)

6 Fund 0132 FY 2008 Org 1400

7			General
8		Act-	Revenue
9		ivity	Funds

10	5	Soil Conservation		
11		Projects (R)	120	\$ 5,250,000

12 And that the total appropriation for the fiscal year ending
13 the thirtieth day of June, two thousand eight, to fund 0186,
14 fiscal year 2008, organization 0201, be supplemented and
15 amended by adding a new item of appropriation as follows:

16 TITLE II--APPROPRIATIONS.

17 **Section 1. Appropriations of General Revenue.**

18 **DEPARTMENT OF ADMINISTRATION**

19 *18--Department of Administration-*
20 *Office of the Secretary*

21 (WV Code Chapter 5F)

22 Fund 0186 FY 2008 Org 0201

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			General Revenue Funds
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23			
24		Act-	
25		ivity	
26	3b Teachers' Retirement		
27	Savings Realized	095	\$ 1,602,000

28 The above appropriation for Teachers' Retirement
29 Savings Realized (fund 0186, activity 095) shall be
30 transferred to the Department of Administration - Office of
31 the Secretary - Employee Pension and Health Care Benefits
32 Fund (fund 2044).

33 And that the total appropriation for the fiscal year ending
34 the thirtieth day of June, two thousand eight, to fund 0195,
35 fiscal year 2008, organization 0205, be supplemented and
36 amended by adding new items of appropriation as follows:

37 TITLE II--APPROPRIATIONS.

38 **Section 1. Appropriations of General Revenue.**

39 **DEPARTMENT OF ADMINISTRATION**

40 *19--Consolidated Public Retirement Board*

41 (WV Code Chapter 5)

42 Fund 0195 FY 2008 Org 0205

			General Revenue Funds
--	--	--	--------------------------------------

43			
44		Act-	
45		ivity	
46	1 Pension Merger Admini-		
47	2 strative Costs (R)	429	\$ 2,000,000
48	3 Supplemental Benefits for		
49	4 Annuitants (R)	892	\$ 2,042,400

50 The above appropriation for Supplemental Benefits for
 51 Annuitants (activity 892) may be transferred to the
 52 appropriate special revenue funds of the Consolidated Public
 53 Retirement Board for expenditure as determined by the
 54 executive secretary.

55 Any unexpended balance remaining in the appropriation
 56 for Supplemental Benefits for Annuitants (fund 0195,
 57 activity 892) at the close of the fiscal year two thousand eight
 58 is hereby reappropriated for expenditure during the fiscal
 59 year two thousand nine.

60 And that the total appropriation for the fiscal year ending
 61 the thirtieth day of June, two thousand eight, to fund 0256,
 62 fiscal year 2008, organization 0307, be supplemented and
 63 amended by increasing existing items of appropriation as
 64 follows:

65 TITLE II--APPROPRIATIONS.

66 **Section 1. Appropriations of General Revenue.**

67 **DEPARTMENT OF COMMERCE**

68 *36--West Virginia Development Office*

69 (WV Code Chapter 5B)

70 Fund 0256 FY 2008 Org 0307

71		Act-		General
72		ivity		Revenue
73				Funds
74	7 Unclassified	099	\$	100,000
75	35 Local Economic Development			
76	Assistance (R)	819	\$	650,000

77 The above appropriation for Unclassified is for the
78 Southern Appalachian Labor School’s Youth Build Program.

79 And that chapter twelve, Acts of the Legislature, regular
80 session, two thousand seven, known as the budget bill, be
81 supplemented and amended by adding to Title II, section one
82 thereof the following:

83 TITLE II--APPROPRIATIONS.

84 Section 1. Appropriations of General Revenue.

85 DEPARTMENT OF COMMERCE

86 *41a–WORKFORCE West Virginia*

87 (WV Code Chapter 23)

88 Fund 0572 FY 2008 Org 0323

89			General
90		Act-	Revenue
91		ivity	Funds

92 1 Unclassified

93	Total (R)	096	\$	674,392
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94 Any unexpended balance remaining in the appropriation
95 for Unclassified - Total (fund 0572, activity 096) at the close
96 of the fiscal year two thousand eight is hereby reappropriated
97 for expenditure during the fiscal year two thousand nine.

98 And that the total appropriation for the fiscal year ending
99 the thirtieth day of June, two thousand eight, to fund 0294,
100 fiscal year 2008, organization 0431, be supplemented and
101 amended by increasing an existing item of appropriation as
102 follows:

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103 TITLE II--APPROPRIATIONS.

104 **Section 1. Appropriations of General Revenue.**

105 **DEPARTMENT OF EDUCATION AND THE ARTS**

106 *52--Department of Education and the Arts-*
107 *Office of the Secretary*

108 (WV Code Chapter 5F)

109 Fund 0294 FY 2008 Org 0431

110			General
111		Act-	Revenue
112		ivity	Funds

113	1 Unclassified	099	\$ 100,000
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114 And that the total appropriation for the fiscal year ending
115 the thirtieth day of June, two thousand eight, to fund 0407,
116 fiscal year 2008, organization 0506, be supplemented and
117 amended by increasing an existing item of appropriation as
118 follows:

119 TITLE II--APPROPRIATIONS.

120 **Section 1. Appropriations of General Revenue.**

121 **DEPARTMENT OF HEALTH AND HUMAN**
122 **RESOURCES**

123 *61--Division of Health-*
124 *Central Office*

125 (WV Code Chapter 16)

126 Fund 0407 FY 2008 Org 0506

151 Any unexpended balance remaining in the appropriation
 152 for Capital Outlay and Maintenance (fund 0403, activity 755)
 153 at the close of the fiscal year two thousand eight is hereby
 154 reappropriated for expenditure during the fiscal year two
 155 thousand nine.

156 And that the total appropriation for the fiscal year ending
 157 the thirtieth day of June, two thousand eight, to fund 0450,
 158 fiscal year 2008, organization 0608, be supplemented and
 159 amended by increasing an existing item of appropriation as
 160 follows:

161 TITLE II--APPROPRIATIONS.

162 **Section 1. Appropriations of General Revenue.**

163 **DEPARTMENT OF MILITARY AFFAIRS**
 164 **AND PUBLIC SAFETY**

165 *72--Division of Corrections-*
 166 *Correctional Units*

167 (WV Code Chapters 25, 28, 49 and 62)

168 Fund 0450 FY 2008 Org 0608

169		General
170		Revenue
171	Act-	Funds
	ivity	

172	12	Payments to Federal,		
173	13	County and/or Regional		
174		Jails (R)	555	\$ 7,207,843

175 Any unexpended balance remaining in the appropriation
 176 for Payments to Federal, County and/or Regional Jails (fund
 177 0450, activity 555) at the close of the fiscal year two

178 thousand eight is hereby reappropriated for expenditure
179 during the fiscal year two thousand nine.

180 And that the total appropriation for the fiscal year ending
181 the thirtieth day of June, two thousand eight, to fund 0589,
182 fiscal year 2008, organization 0441, be supplemented and
183 amended by adding a new item of appropriation as follows:

184 TITLE II--APPROPRIATIONS.

185 Section 1. Appropriations of General Revenue.

186 HIGHER EDUCATION

187 90--Higher Education Policy Commission-
188 Administration-
189 Control Account

190 (WV Code Chapter 18B)

191 Fund 0589 FY 2008 Org 0441

192		General
193	Act-	Revenue
194	ivity	Funds

195	7a Capital Outlay and		
196	Maintenance (R)	755	\$ 8,000,000

197 Any unexpended balance remaining in the appropriation
198 for Capital Outlay and Maintenance (fund 0589, activity 755)
199 at the close of the fiscal year two thousand eight is hereby
200 reappropriated for expenditure during the fiscal year two
201 thousand nine.

202 The purpose of this supplemental appropriation bill is to
203 supplement, amend, increase and add items of appropriations
204 in the aforesaid accounts for the designated spending units
205 for expenditure during the fiscal year two thousand eight.

CHAPTER 3

(S.B. 1007 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 16, 2008; in effect from passage.]

[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Division of Natural Resources, fund 3267, fiscal year 2008, organization 0310, and to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2008, organization 0508, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor's Executive Budget Document, Statement of Lottery Net Profits, there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3267, fiscal year 2008, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 4. Appropriations from Lottery Net Profits.**

3 *242--Division of Natural Resources*

4 (WV Code Chapter 20)

5 Fund 3267 FY 2008 Org 0310

6		Act-	Lottery
7		ivity	Funds

8	3a Capital Outlay -		
9	Parks (R)	288	\$12,000,000

10 And that the total appropriation for the fiscal year ending
11 the thirtieth day of June, two thousand eight, to fund 5405,
12 fiscal year 2008, organization 0508, be supplemented and
13 amended by increasing an existing item of appropriation as
14 follows:

15 TITLE II--APPROPRIATIONS.

16 **Sec. 4. Appropriations from Lottery Net Profits.**

17 *248--Bureau of Senior Services-*
18 *Lottery Senior Citizens Fund*

19 (WV Code Chapter 29)

20 Fund 5405 FY 2008 Org 0508

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21		Act-	
22		ivity	Lottery
			Funds
23	7 Silver Haired		
24	Legislature	202	\$ 15,000

25 The purpose of this supplementary appropriation bill is to
 26 supplement, amend, add and increase items of appropriation
 27 in the aforesaid accounts for the designated spending units
 28 for expenditure during the fiscal year two thousand eight.



CHAPTER 4

(S.B. 1008 - By Senators Helmick, Sharpe, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)

[Passed March 16, 2008; in effect from passage.]
 [Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2008, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education - State Department of Education - State Aid to Schools, fund 0317, fiscal year 2008, organization 0402, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2008, organization 0432, to the Department of Education and the Arts - Educational Broadcasting Authority, fund 0300, fiscal year

2008, organization 0439, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2008, organization 0932, to the Department of Health and Human Resources - Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2008, organization 0501, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2008, organization 0613, and to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2008, organization 0441, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0226, fiscal year 2008, organization 0221, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations of General Revenue.**

3 **DEPARTMENT OF ADMINISTRATION**

4 *26--Public Defender Services*

5 (WV Code Chapter 29)

6 Fund 0226 FY 2008 Org 0221

7		General
8		Revenue
9	Act-	Fund
	ivity	

10	6a Appointed Counsel Fees -		
11	Surplus (R)	435	\$ 6,000,000

12

13 Any unexpended balance remaining in the appropriation

14 for Appointed Counsel Fees - Surplus (fund 0226, activity

15 435) at the close of the fiscal year two thousand eight is

16 hereby reappropriated for expenditure during the fiscal year

17 two thousand nine.

18 And that the total appropriation for the fiscal year ending

19 the thirtieth day of June, two thousand eight, to fund 0313,

20 fiscal year 2008, organization 0402, be supplemented and

21 amended by increasing an existing item of appropriation as

22 follows:

23 TITLE II--APPROPRIATIONS.

24 **Section 1. Appropriations of General Revenue.**

25 **DEPARTMENT OF EDUCATION**

26 *46--State Department of Education*

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27 (WV Code Chapters 18 and 18A)

28 Fund 0313 FY 2008 Org 0402

29				
30			Act-	General
31			ivity	Revenue
				Fund

32	4	Unclassified - Surplus	097	\$ 499,823
----	---	----------------------------------	-----	------------

33 And that the total appropriation for the fiscal year ending
34 the thirtieth day of June, two thousand eight, to fund 0317,
35 fiscal year 2008, organization 0402, be supplemented and
36 amended by increasing an existing item of appropriation as
37 follows:

38 TITLE II--APPROPRIATIONS.

39 **Section 1. Appropriations of General Revenue.**

40 **DEPARTMENT OF EDUCATION**

41 *48--State Department of Education-*
42 *State Aid to Schools*

43 (WV Code Chapters 18 and 18A)

44 Fund 0317 FY 2008 Org 0402

45				
46			Act-	General
47			ivity	Revenue
				Fund

48	13	Public Employees' Insurance		
49		Matching - Surplus	290	\$ 5,744,475

50 And that the total appropriation for the fiscal year ending
51 the thirtieth day of June, two thousand eight, to fund 0293,

52 fiscal year 2008, organization 0432, be supplemented and
53 amended by increasing an existing item of appropriation as
54 follows:

55 TITLE II--APPROPRIATIONS.

56 **Section 1. Appropriations of General Revenue.**

57 **DEPARTMENT OF EDUCATION AND THE ARTS**

58 *53--Division of Culture and History*

59 (WV Code Chapter 29)

60 Fund 0293 FY 2008 Org 0432

61		General
62	Act-	Revenue
63	ivity	Fund

64	4 Unclassified - Surplus (R) 097	\$ 200,000
----	--	------------

65 Any unexpended balance remaining in the appropriation
66 for Unclassified - Surplus (fund 0293, activity 097) at the
67 close of the fiscal year two thousand eight is hereby
68 reappropriated for expenditure during the fiscal year two
69 thousand nine.

70 And that the total appropriation for the fiscal year ending
71 the thirtieth day of June, two thousand eight, to fund 0300,
72 fiscal year 2008, organization 0439, be supplemented and
73 amended by increasing an existing item of appropriation as
74 follows:

75 TITLE II--APPROPRIATIONS.

76 **Section 1. Appropriations of General Revenue.**

77 **DEPARTMENT OF EDUCATION AND THE ARTS**

78 *55-Educational Broadcasting Authority*

79 (WV Code Chapter 10)

80 Fund 0300 FY 2008 Org 0439

81		General
82	Act-	Revenue
83	ivity	Fund

84 4 Unclassified - Surplus (R) 097 \$ 472,625

85
86 Any unexpended balance remaining in the appropriation
87 for Unclassified - Surplus (fund 0300, activity 097) at the
88 close of the fiscal year two thousand eight is hereby
89 reappropriated for expenditure during the fiscal year two
90 thousand nine.

91 And that the total appropriation for the fiscal year ending
92 the thirtieth day of June, two thousand eight, to fund 0310,
93 fiscal year 2008, organization 0932, be supplemented and
94 amended by adding a new item of appropriation as follows:

95 **TITLE II--APPROPRIATIONS.**

96 **Section 1. Appropriations of General Revenue.**

97 **DEPARTMENT OF EDUCATION AND THE ARTS**

98 *56-State Board of Rehabilitation-*
99 *Division of Rehabilitation Services*

100 (WV Code Chapter 18)

101 Fund 0310 FY 2008 Org 0932

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		Act-	General
		ivity	Revenue
			Fund

105	4a Unclassified - Surplus (R)	097	\$ 450,000
-----	-------------------------------	-----	------------

106

107 Any unexpended balance remaining in the appropriation
108 for Unclassified - Surplus (fund 0310, activity 097) at the
109 close of the fiscal year two thousand eight is hereby
110 reappropriated for expenditure during the fiscal year two
111 thousand nine.

112 And that the total appropriation for the fiscal year ending
113 the thirtieth day of June, two thousand eight, to fund 0400,
114 fiscal year 2008, organization 0501, be supplemented and
115 amended by increasing an existing item of appropriation as
116 follows:

117 TITLE II--APPROPRIATIONS.

118 **Section 1. Appropriations of General Revenue.**

119 **DEPARTMENT OF HEALTH AND HUMAN**
120 **RESOURCES**

121 *60--Department of Health and Human Resources-*
122 *Office of the Secretary*

123 (WV Code Chapter 5F)

124 Fund 0400 FY 2008 Org 0501

		Act-	General
		ivity	Revenue
			Fund

128	1 Unclassified - Surplus	097	\$ 50,000
-----	------------------------------------	-----	-----------

129 And that the total appropriation for the fiscal year ending
 130 the thirtieth day of June, two thousand eight, to fund 0407,
 131 fiscal year 2008, organization 0506, be supplemented and
 132 amended by increasing existing items of appropriation as
 133 follows:

134 TITLE II--APPROPRIATIONS.

135 **Section 1. Appropriations of General Revenue.**

136 **DEPARTMENT OF HEALTH AND HUMAN**
 137 **RESOURCES**

138 *61--Division of Health-*
 139 *Central Office*

140 (WV Code Chapter 16)

141 Fund 0407 FY 2008 Org 0506

142		Act-	General
143		ivity	Revenue
144			Fund
145	1 Personal Services - Surplus	243	\$ 133,578
146	3 Employee Benefits - Surplus	250	\$ 47,116
147	6 Unclassified - Surplus	097	\$ 353,220

148
 149 And that the total appropriation for the fiscal year ending
 150 the thirtieth day of June, two thousand eight, to fund 0456,
 151 fiscal year 2008, organization 0613, be supplemented and
 152 amended by increasing an existing item of appropriation and
 153 adding a new item of appropriation as follows:

154 TITLE II--APPROPRIATIONS.

155 **Section 1. Appropriations of General Revenue.**

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156

DEPARTMENT OF MILITARY AFFAIRS

157

AND PUBLIC SAFETY

158

74–Division of Veterans’ Affairs

159

(WV Code Chapter 9A)

160

Fund 0456 FY 2008 Org 0613

161

General

162

Act-

Revenue

163

ivity

Funds

164

6 Veterans Nursing Home -

165

Surplus 291 \$ 1,194,131

166

9a Vehicle Purchase - Surplus 612 \$ 100,000

167

And that the total appropriation for the fiscal year ending
168 the thirtieth day of June, two thousand eight, to fund 0589,
169 fiscal year 2008, organization 0441, be supplemented and
170 amended by increasing an existing item of appropriation as
171 follows:

172

TITLE II--APPROPRIATIONS.

173

Section 1. Appropriations of General Revenue.

174

HIGHER EDUCATION

175

90–Higher Education Policy Commission-

176

Administration-

177

Control Account

178

(WV Code Chapter 18B)

179

Fund 0589 FY 2008 Org 0441

Office of the Secretary - Employee Pension and Health Care Benefit Fund, fund 2044, fiscal year 2008, organization 0201, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF ADMINISTRATION**

4 *113a--Office of the Secretary-*
5 *Employee Pension and Health Care Benefit Fund*

6 (WV Code Chapter 18)

7 Fund 2044 FY 2008 Org 0201

8			General
9		Act-	Revenue
10		ivity	Funds

11 1 Unclassified - Total 096 \$ 1,602,000

12

13 The above appropriation for Unclassified - Total (fund
14 2044, activity 096) shall be transferred to the Consolidated
15 Public Retirement Board - West Virginia Teachers
16 Retirement System Employers Accumulation Fund (fund
17 2601).

18 The purpose of this supplementary appropriation bill is to
19 supplement the accounts in the budget act for the fiscal year
20 ending the thirtieth day of June, two thousand eight, by
21 providing for a new item of appropriation to be established
22 therein to appropriate funds for the designated spending unit
23 for expenditure during the fiscal year two thousand eight.

CHAPTER 6

**(S.B. 1011 - By Senators Helmick, Sharpe, Plymale, Chafin,
Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger,
Fanning, Sypolt, Facemyer, Boley, Sprouse and Guills)**

[Passed March 16, 2008; in effect from passage.]

[Approved by the Governor on March 21, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2008, organization 0705, to the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, to the Division of Health - Central Office, fund 5219, fiscal year 2008, organization 0506, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 6005, fiscal year 2008, organization 0601, to the Division of Corrections - Correctional Units, fund 6283, fiscal year 2008, organization 0608, and to the Higher Education Policy Commission - Administration - Control Account, fund 4932, fiscal year 2008, organization 0441, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenue for the fiscal year two thousand eight, less regular and surplus appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 7208, fiscal year 2008, organization 0705, be supplemented and amended to hereafter read as follows:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 5. Appropriations from State Excess Lottery**
 3 **Revenue Fund.**

4 *258--Lottery Commission-*
 5 *Excess Lottery Revenue Fund Surplus*

6 Fund 7208 FY 2008 Org 0705

7		Act-	
8		ivity	Lottery
			Funds

9	1 Capitol Complex - Capital		
10	Outlay	417	\$51,500,000
11	2 Unclassified - Transfer	482	\$16,900,000

12	3 Consolidated Public Retirement -		
13	4 Transfer	918	<u>\$24,516,867</u>
14	5 Total		<u>\$92,916,867</u>

15 From the above appropriation for Unclassified - Transfer
 16 (activity 482) twelve million nine hundred thousand dollars
 17 shall be transferred to the General Revenue Fund only after
 18 all funding required by section eighteen-a, article twenty-two,
 19 chapter twenty-nine of the Code of West Virginia has been
 20 satisfied as determined by the Director of the Lottery but
 21 before any other nonstatutory appropriations to the State
 22 Excess Lottery Revenue Fund are funded.

23 From the above transfer for Unclassified - Transfer
 24 (activity 482) four million dollars shall be transferred to
 25 Underground Storage Tank Insurance Fund (fund 3218, org
 26 0313).

27 The above appropriation for Consolidated Public
 28 Retirement - Transfer (fund 7208, activity 918) shall be
 29 transferred to the Consolidated Public Retirement Board -
 30 West Virginia Teachers Retirement System Employers
 31 Accumulation Fund (fund 2601) only after all funding
 32 required by section eighteen-a, article twenty-two, chapter
 33 twenty-nine of the Code of West Virginia and the transfer to
 34 the General Revenue Fund (fund 7208, org 0705, activity
 35 482) has been satisfied as determined by the Director of the
 36 Lottery.

37 The above appropriation for Capitol Complex - Capital
 38 Outlay (fund 7208, activity 417) shall be transferred to the
 39 Capitol Dome and Capital Improvements Fund (fund 2257)
 40 only after all funding required by section eighteen-a, article
 41 twenty-two, chapter twenty-nine of the Code of West
 42 Virginia and the transfer to the General Revenue Fund (fund
 43 7208, org 0705, activity 482) has been satisfied as
 44 determined by the Director of the Lottery.

45 Should the actual revenues accruing to the total State
 46 Excess Lottery Revenue Fund be insufficient to fully fund all
 47 appropriations, the appropriation to the Capital Complex -
 48 Capital Outlay (activity 417) shall be reduced to the extent
 49 funds are available and the appropriation made in the reduced
 50 amount and thereafter transferred to the Capital Dome and
 51 Capital Improvement Fund (fund 2257).

52 And that the total appropriation for the fiscal year ending
 53 the thirtieth day of June, two thousand eight, to fund 3170,
 54 fiscal year 2008, organization 0307, be supplemented and
 55 amended by adding new items of appropriation as follows:

56 TITLE II--APPROPRIATIONS.

57 **Sec. 5. Appropriations from State Excess Lottery**
 58 **Revenue Fund.**

59 *262--West Virginia Development Office*

60 (WV Code Chapter 5B)

61 Fund 3170 FY 2008 Org 0307

62	63	Act- ivity	Lottery Funds
64	1 Recreational Grants or Economic		
65	Development Loans (R)	253	\$ 10,000,000
66	2 Economic Development		
67	Assistance (R)	900	\$ 2,000,000

68 Any unexpended balances remaining in the
 69 appropriations for Recreational Grants or Economic
 70 Development Loans (fund 3170, activity 253) or Economic
 71 Development Assistance (fund 3170, fund 900) at the close
 72 of the fiscal year two thousand eight are hereby

73 reappropriated for expenditure during the fiscal year two
74 thousand nine.

75 From the above appropriation for Recreational Grants or
76 Economic Development Loans (activity 253) one hundred
77 thousand dollars is for Mercer County Horse Park.

78 And that the total appropriation for the fiscal year ending
79 the thirtieth day of June, two thousand eight, to fund 5219,
80 fiscal year 2008, organization 0506, be supplemented and
81 amended by adding a new item of appropriation as follows:

82 TITLE II--APPROPRIATIONS.

83 **Sec. 5. Appropriations from State Excess Lottery**
84 **Revenue Fund.**

85 *263--Division of Health-*
86 *Central Office*

87 (WV Code Chapter 16)

88 Fund 5219 FY 2008 Org 0506

89		Act-	Lottery
90		ivity	Funds

91	1 Capital Outlay and		
92	Maintenance (R)	755	\$ 1,000,000
93			

94 Any unexpended balance remaining in the appropriation
95 for Capital Outlay and Maintenance (fund 5219, activity 755)
96 at the close of the fiscal year two thousand eight is hereby
97 reappropriated for expenditure during the fiscal year two
98 thousand nine.

99 And that chapter twelve, Acts of the Legislature, regular
100 session, two thousand seven, known as the budget bill, be

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101 supplemented and amended by adding to Title II, section five
102 thereof, the following:

103 TITLE II--APPROPRIATIONS.

104 **Sec. 5. Appropriations from State Excess Lottery**
105 **Revenue Fund.**

106 *263a--Department of Military Affairs and*
107 *Public Safety-*
108 *Office of the Secretary*

109 (WV Code Chapter 5F)

110 Fund 6005 FY 2008 Org 0601

111		Act-	Lottery
112		ivity	Funds

113	1 Interoperable Communications		
114	2 System (R)	303	\$10,000,000
115			

116 Any unexpended balance remaining in the appropriation
117 for Interoperable Communications System (fund 6005,
118 activity 303) at the close of the fiscal year two thousand eight
119 is hereby reappropriated for expenditure during the fiscal
120 year two thousand nine.

121 And that chapter twelve, Acts of the Legislature, regular
122 session, two thousand seven, known as the budget bill, be
123 supplemented and amended by adding to Title II, section five
124 thereof, the following:

125 TITLE II--APPROPRIATIONS.

126 **Sec. 5. Appropriations from State Excess Lottery**
127 **Revenue Fund.**

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128 *263b—Division of Corrections-*
129 *Correctional Units*

130 (WV Code Chapters 25, 28, 49 and 62)

131 Fund 6283 FY 2008 Org 0608

132		Act-	
133		ivity	Lottery
			Funds

134	1 Capital Outlay, Repairs and		
135	2 Equipment (R)	589	\$ 1,500,000
136	3 Capital Outlay and		
137	Maintenance	755	\$ <u>2,000,000</u>
138	4 Total		\$ 3,500,000

139 Any unexpended balances remaining in the
140 appropriations for Capital Outlay, Repairs and Equipment
141 (fund 6283, activity 589) and Capital Outlay and
142 Maintenance, (fund 6283, activity 755) at the close of the
143 fiscal year two thousand eight are hereby reappropriated for
144 expenditure during the fiscal year two thousand nine.

145 And that chapter twelve, Acts of the Legislature, regular
146 session, two thousand seven, known as the budget bill, be
147 supplemented and amended by adding to Title II, section five
148 thereof, the following:

149 TITLE II--APPROPRIATIONS.

150 **Sec. 5. Appropriations from State Excess Lottery**
151 **Revenue Fund.**

152 *265a—Higher Education Policy Commission-*
153 *Administration-*
154 *Control Account*

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155 (WV Code Chapter 18B)

156 Fund 4932 FY 2008 Org 0441

157		Act-	Lottery
158		ivity	Funds
159	1 Research Investment	020	\$ 50,000,000
160	2 Advanced Technology		
161	Centers (R)	028	\$ 30,000,000
162	3 Energy Savings Loan		
163	Program	050	\$ 7,000,000
164	4 Allied Health Program		
165	Expansion	052	\$ 7,154,898
166	5 Higher Education Grant		
167	Program	164	\$ 1,000,000
168	6 HEAPS Grant Program (R)	867	\$ <u>1,000,000</u>
169	7 Total		\$96,154,898

170 The above appropriation for Research Investment (fund
171 4932, activity 020) shall be transferred to the West Virginia
172 Research Trust Fund.

173 Any unexpended balances remaining in the
174 appropriations for Advanced Technology Centers (fund 4932,
175 activity 028), Energy Savings Loan Program (fund 4932,
176 activity 050), Allied Health Program Expansion (fund 4932,
177 activity 052) and HEAPS Grant Program (fund 4932, activity
178 867) at the close of the fiscal year two thousand eight are
179 hereby reappropriated for expenditure during the fiscal year
180 two thousand nine.

181 The above appropriation for Higher Education Grant
182 Program (activity 164) shall be transferred to the Higher
183 Education Grant Fund (fund 4933, org 0441) established by
184 section three, article five, chapter eighteen-c of the Code of
185 West Virginia.

186 The purpose of this supplemental appropriation bill is to
187 supplement, amend, add and increase items of appropriation
188 in the aforesaid accounts for the designated spending units
189 for expenditure during the fiscal year two thousand eight.

CHAPTER 7

**(H.B. 101 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 16, 2008; in effect from passage.]

[Approved by the Governor on April 1, 2008.]

AN ACT to repeal §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code; to amend and reenact §18-7B-7, §18-7B-7a and §18-7B-8 of said code; and to amend said code by adding thereto a new article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10 and §18-7D-11, all relating to the State Teachers Retirement System and the Teachers' Defined Contribution System generally; relating to the voluntary transfer of assets from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; computing teachers' service; authorizing certain loans; providing legislative findings and purpose; providing definitions; providing opportunities for members of the State Teachers' Defined Contribution Retirement System to affirmatively elect to transfer their assets to the State Teacher's Retirement System; establishing requirements and processes for members to affirmatively elect to transfer; providing

responsibilities of the Consolidated Public Retirement Board; setting forth dates and time periods for members to affirmatively elect to transfer; providing for education about the opportunity to affirmatively elect to transfer; requiring notice to members; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the voluntary transfer; providing for voluntary transfer from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System if sixty-five percent or more of the actively contributing members affirmatively elect to transfer; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon the affirmative election of sixty-five percent or more of the actively contributing members; providing for service credit in the State Teachers Retirement System; permitting transferring members to pay an Actuarial Reserve in order to receive full credit upon transfer if at least sixty-five percent but less than seventy-five percent of actively contributing members affirmatively elect to transfer; permitting transferring members to pay a one and one-half percent contribution plus interest in order to receive full credit upon transfer if seventy-five percent or more of actively contributing members affirmatively elect to transfer; addressing withdrawals and cash outs; addressing qualified domestic relations orders; providing for vesting and minimum guarantees of benefits for members affirmatively electing to transfer; and prohibiting retirement without appropriate notice.

Be it enacted by the Legislature of West Virginia:

That §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14 of the Code of West Virginia, 1931, as amended, be repealed; that §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code be amended and reenacted; that §18-7B-7, §18-7B-7a and §18-7B-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new

article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10 and §18-7D-11, all to read as follows:

Article

7A. State Teachers Retirement System.

7B. Teachers' Defined Contribution Retirement System.

7D. Voluntary Transfer From Teachers' Defined Contribution Retirement System to State Teachers Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members; contributions by employers.

§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

§18-7A-34. Loans to members.

§18-7A-40. Higher education employees.

§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
3 member's monthly gross salary to the retirement board:
4 *Provided*, That any member employed by a state institution
5 of higher education shall contribute on the member's full
6 earnable compensation, unless otherwise provided in section
7 fourteen-a of this article. The sums are due the Teachers
8 Retirement System at the end of each calendar month in
9 arrears and shall be paid not later than fifteen days following
10 the end of the calendar month. Each remittance shall be
11 accompanied by a detailed summary of the sums withheld
12 from the compensation of each member for that month on
13 forms, either paper or electronic, provided by the Teachers
14 Retirement System for that purpose.

15 (b) Annually, the contributions of each member shall be
16 credited to the member's account in the Teachers Retirement
17 System Fund. The contributions shall be deducted from the
18 salaries of the members as prescribed in this section and
19 every member shall be considered to have given consent to

20 the deductions. No deductions, however, shall be made from
21 the earnable compensation of any member who retired
22 because of age or service and then resumed service unless as
23 provided in section thirteen-a of this article.

24 (c) The aggregate of employer contributions, due and
25 payable under this article, shall equal annually the total
26 deductions from the gross salary of members required by this
27 section. Beginning the first day of July, one thousand nine
28 hundred ninety-four, the rate shall be seven and one-half
29 percent; beginning on the first day of July, one thousand nine
30 hundred ninety-five, the rate shall be nine percent; beginning
31 on the first day of July, one thousand nine hundred ninety-
32 six, the rate shall be ten and one-half percent; beginning on
33 the first day of July, one thousand nine hundred ninety-seven,
34 the rate shall be twelve percent; beginning on the first day of
35 July, one thousand nine hundred ninety-eight, the rate shall
36 be thirteen and one-half percent; and beginning on the first
37 day of July, one thousand nine hundred ninety-nine and
38 thereafter, the rate shall be fifteen percent: *Provided*, That the
39 rate shall be seven and one-half percent for any individual
40 who becomes a member of the Teachers Retirement System
41 for the first time on or after the first day of July, two
42 thousand five, or any individual who becomes a member of
43 the Teachers Retirement System as a result of the voluntary
44 transfer contemplated in article seven-d of this chapter.

45 (d) Payment by an employer to a member of the sum
46 specified in the employment contract minus the amount of
47 the employee's deductions shall be considered to be a full
48 discharge of the employer's contractual obligation as to
49 earnable compensation.

50 (e) Each contributor shall file with the retirement board
51 or with the employer to be forwarded to the retirement board
52 an enrollment form showing the contributor's date of birth
53 and other data needed by the retirement board.

§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated the “Teachers Employers
3 Contribution Collection Account” to be administered by the
4 Consolidated Public Retirement Board. The Teachers
5 Employers Contribution Collection Account shall be an
6 interest-bearing account with interest credited to and
7 deposited in the account and transferred in accordance with
8 the provisions of this section.

9 (b) There shall be deposited into the Teachers Employers
10 Contribution Collection Account the following:

11 (1) Contributions of employers, through state
12 appropriations, and such amounts shall be included in the
13 budget bill submitted annually by the Governor;

14 (2) Beginning on the first day of July, two-thousand five,
15 contributions from each county in an amount equal to fifteen
16 percent of all salary paid in excess of that authorized for
17 minimum salaries in sections two and eight-a, article four,
18 chapter eighteen-a of this code and any salary equity
19 authorized in section five of said article or any county
20 supplement equal to the amount distributed for salary equity
21 among the counties for each individual who was a member of
22 the Teachers’ Retirement System before the first day of July,
23 two-thousand five: *Provided*, That the rate shall be seven
24 and one-half percent for any individual who becomes a
25 member of the Teachers Retirement System for the first time
26 on or after the first day of July, two-thousand five or any
27 individual who becomes a member of the Teachers’
28 Retirement System as a result of the transfer contemplated in
29 article seven-d of this chapter;

30 (3) The amounts transferred pursuant to section eighteen-
31 a of this article; and

32 (4) Any other moneys, available and not otherwise
33 expended, which may be appropriated or transferred to this
34 account.

35 (c) Moneys on deposit in the Teacher Employers
36 Contribution Collection Account shall be transferred monthly
37 in the following order:

38 (1) To the Teachers' Retirement System Fund the amount
39 certified by the Consolidated Public Retirement Board as the
40 actuarially required contribution; and

41 (2) The balance, if any, to the Employee Pension and
42 Health Care Benefits Fund established under section thirty-
43 nine, article seven-a of this chapter.

44 (d) There is hereby continued in the State Treasury a
45 separate irrevocable trust designated the Teachers'
46 Retirement System Fund. The Teachers' Retirement System
47 Fund shall be invested as provided in section nine-a, article
48 six, chapter twelve of this code.

49 (e) There shall be deposited into the Teachers'
50 Retirement System Fund, the following:

51 (1) Moneys transferred from the Teachers Employers
52 Contribution Collection Account;

53 (2) Member contributions provided for in section fifteen
54 of this article;

55 (3) Gifts and bequests to the fund and any accretions and
56 accumulations which may properly be paid into and become
57 a part of the fund;

58 (4) Specific appropriations to the fund made by the
59 Legislature;

60 (5) Interest on the investment of any part or parts of the
61 fund; and

62 (6) Any other moneys, available and not otherwise
63 expended, which may be appropriated or transferred to the
64 Teachers Retirement System or the Fund.

65 (f) The Teachers Retirement System Fund shall be the
66 fund from which annuities shall be paid.

67 (g) The Consolidated Public Retirement Board has sole
68 authority to direct and approve the making of any and all
69 fund transfers as provided in this section, anything in this
70 code to the contrary notwithstanding.

71 (h) References in the code to the Teachers Accumulation
72 Fund, the Employers Accumulation Fund, the Benefit Fund,
73 the Reserve Fund and the Expense Fund mean the Teachers
74 Retirement System Fund.

§18-7A-34. Loans to members.

1 (a) An actively contributing member of the retirement
2 system upon written application may borrow from his or her
3 individual account in the Teachers Retirement System,
4 subject to these restrictions:

5 (1) Loans shall be made in multiples of ten dollars, the
6 minimal loan being one hundred dollars and the maximum
7 being eight thousand dollars: *Provided*, That the maximum
8 amount of any loan when added to the outstanding balance of
9 all other loans shall not exceed the lesser of the following:
10 (A) Eight thousand dollars reduced by the excess (if any) of
11 the highest outstanding balance of loans during the one-year

12 period ending on the day before the date on which the loan is
13 made, over the outstanding balance of loans to the member
14 on the date on which the loan is made; or (B) fifty percent of
15 the member's contributions to his or her individual account
16 in the Teachers Retirement System: *Provided, however,* That
17 if the total amount of loaned money outstanding exceeds
18 forty million dollars, the maximum shall not exceed three
19 thousand dollars until the Retirement Board determines that
20 loans outstanding have been reduced to an extent that
21 additional loan amounts are again authorized: *Provided*
22 *further,* That the amount of any loan made pursuant to article
23 seven-d of this chapter is not included for the purposes of
24 determining if the forty million dollar threshold has been
25 exceeded.

26 (2) Interest charged on the amount of the loan shall be six
27 percent per annum, or a higher rate as set by the Board:
28 *Provided,* That interest charged shall be commercially
29 reasonable in accordance with the provisions of section
30 72(p)(2) of the Internal Revenue Code, and the federal
31 regulations issued thereunder. If repayable in installments,
32 the interest shall not exceed the annual rate so established
33 upon the principal amount of the loan, for the entire period of
34 the loan, and such charge shall be added to the principal
35 amount of the loan. The minimal interest charge shall be for
36 six months.

37 (3) No member is eligible for more than one outstanding
38 loan at any time: *Provided,* That the foregoing provision does
39 not apply to any loan made pursuant to article seven-d of this
40 chapter. Upon full payment of a loan, a member may apply
41 for a subsequent loan after sixty days beginning the first day
42 of the month following receipt of final payment.

43 (4) If a refund is payable to the borrower or his or her
44 beneficiary before he or she repays the loan with interest, the
45 balance due with interest to date shall be deducted from the
46 refund.

47 (5) From his or her monthly salary as a teacher or a
48 nonteacher the member shall pay the loan and interest by
49 deductions which will pay the loan and interest in
50 substantially level payments in not more than sixty nor less
51 than six months. Upon notice of loan granted and payment
52 due, the employer is responsible for making the salary
53 deductions and reporting them to the Retirement Board. At
54 the option of the board, loan deductions may be collected as
55 prescribed herein for the collection of members' contribution,
56 or may be collected through issuance of warrant by employer.
57 If the borrower is no longer employed as a teacher or
58 nonteaching member, the borrower must make monthly loan
59 payments directly to the Consolidated Public Retirement
60 Board and the Board must accept the payments.

61 (6) The entire unpaid balance of any loan, and interest
62 due thereon, shall, at the option of the board, become due and
63 payable without further notice or demand upon the
64 occurrence with respect to the borrowing member of any of
65 the following events of default: (A) Any payment of
66 principal and accrued interest on a loan remains unpaid after
67 it becomes due and payable under the terms of the loan or
68 after the grace period established in the discretion of the
69 Board; (B) the borrowing member attempts to make an
70 assignment for the benefit of creditors of his or her refund or
71 benefit under the retirement system; or (C) any other event of
72 default set forth in rules promulgated by the board in
73 accordance with the authority granted pursuant to section
74 one, article ten-d, chapter five of this code: *Provided*, That
75 any refund or offset of an unpaid loan balance shall be made
76 only at the time the member is entitled to receive a
77 distribution under the retirement system.

78 (7) Loans shall be evidenced by such form of obligations
79 and shall be made upon such additional terms as to default,
80 prepayment, security, and otherwise as the board determines.

81 (8) Notwithstanding anything herein to the contrary, the
82 loan program authorized by this section shall comply with the
83 provisions of Section 72(p)(2) and Section 401 of the Internal
84 Revenue Code, and the federal regulations issued thereunder,
85 and accordingly, the Retirement Board is authorized to: (A)
86 Apply and construe the provisions of this section and
87 administer the plan loan program in such a manner as to
88 comply with the provisions of Section 72(p)(2) and Section
89 401 of the Internal Revenue Code and the federal regulations
90 issued thereunder; (B) adopt plan loan policies or procedures
91 consistent with these federal law provisions; and (C) take
92 such actions as it deems necessary or appropriate to
93 administer the plan loan program created hereunder in
94 accordance with these federal law provisions. The
95 Retirement Board is further authorized in connection with the
96 plan loan program to take any actions that may at any time be
97 required by the Internal Revenue Service regarding
98 compliance with the requirements of Section 72(p)(2) or
99 Section 401 of the Internal Revenue Code, and the federal
100 regulations issued thereunder, notwithstanding any provision
101 in this article to the contrary.

102 (b) Notwithstanding anything in this article to the
103 contrary, the loan program authorized by this section shall
104 not be available to any teacher or nonteacher who becomes
105 a member of the Teachers Retirement System on or after the
106 first day of July, two thousand five: *Provided*, That a
107 member is eligible for a loan under article seven-d of this
108 chapter to pay all or part of the Actuarial Reserve, or if
109 available in accordance with the provisions of subsection (d),
110 section six, article seven-d of this chapter, the one and one-
111 half percent contribution for service in the Teachers' Defined
112 Contribution System for the purpose of receiving additional
113 service credit in the State Teachers Retirement System
114 pursuant to section six, article seven-d, of this chapter.

§18-7A-40. Higher education employees.

1 Nothing in this article or article seven-b of this chapter
2 shall be construed:

3 (1) To be in conflict with section four-a, article
4 twenty-three, chapter eighteen of this code; or

5 (2) To affect the membership of higher education
6 employees who are currently members of either the State
7 Teachers Retirement System created in this article or the
8 Teachers' Defined Contribution Retirement System created
9 in article seven-b of this chapter: *Provided*, That any higher
10 education employees who are currently members of the
11 Teachers' Defined Contribution Retirement System may
12 become members of the Teachers Retirement System upon
13 meeting the requirements of article seven-d of this chapter.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

- §18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.
- §18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.
- §18-7B-8. Voluntary participation in system; expiration of right to elect membership in defined contribution system.

§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.

1 (a) Beginning the first day of July, one thousand nine
2 hundred ninety-one, and except as provided in this section,
3 the Teachers' Defined Contribution Retirement System shall
4 be the single retirement program for all new employees
5 whose employment commences on or after that date and all
6 new employees shall be required to participate. No
7 additional new employees except as may be provided in this
8 section may be admitted to the existing Teachers Retirement
9 System.

10 (b) Members of the existing Teachers Retirement System
11 whose employment continues beyond the first day of July,
12 one thousand nine hundred ninety-one, and those whose
13 employment was terminated after the thirtieth day of June,
14 one thousand nine hundred ninety-one, under a reduction in
15 force are not affected by subsection (a) of this section and
16 shall continue to contribute to and participate in the existing
17 Teachers Retirement System without a change in plan
18 provisions or benefits.

19 (c) Any person who was previously a member of the
20 Teachers Retirement System and who left participating
21 employment before the creation of the Teachers' Defined
22 Contribution Retirement System on the first day of July, one
23 thousand nine hundred ninety-one, and who later returns to
24 participating employment after the effective date of this
25 section shall return to the existing Teachers Retirement
26 System.

27 (d) Any person who was, prior to the first day of July,
28 one thousand nine hundred ninety-one, a member of the
29 existing Teachers Retirement System who left participating
30 employment before the creation of the Teachers' Defined
31 Contribution Retirement System on the first day of July, one
32 thousand nine hundred ninety-one, and who later returned to
33 participating employment after that date and who was
34 precluded from returning to the existing Teachers Retirement
35 System as a result of prior provisions of this section, may
36 become a member of the Teachers Retirement System upon
37 meeting the requirements provided in article seven-d of this
38 chapter.

39 (e) Any employee whose employment with an employer
40 was suspended or terminated while he or she served as an
41 officer with a statewide professional teaching association, is
42 eligible for readmission to the existing retirement system in
43 which he or she was a member.

44 (f) An employee whose employment with an employer or
45 an existing employer is suspended as a result of an approved
46 leave of absence, approved maternity or paternity break in
47 service or any other approved break in service authorized by
48 the Board is eligible for readmission to the existing
49 retirement system in which he or she was a member.

50 (g) In all cases in which a question exists as to the right
51 of an employee to readmission to membership in the existing
52 Teachers Retirement System, the Consolidated Public
53 Retirement Board shall decide the question.

54 (h) Any individual who is not a “member” or “employee”
55 as defined by section two of this article and any individual
56 who is a leased employee is not eligible to participate in the
57 Teachers’ Defined Contribution Retirement System. For
58 purposes of this section, a “leased” employee means any
59 individual who performs services as an independent
60 contractor or pursuant to an agreement with an employee
61 leasing organization or other similar organization. In all
62 cases in which a question exists as to whether an individual
63 is eligible for membership in this system, the Consolidated
64 Public Retirement Board shall decide the question.

65 (i) Effective the first day of July, two thousand five and
66 continuing through the first day of two thousand six, any
67 employee of River Valley Child Development Services, Inc.,
68 who is a member of the Teachers’ Defined Contribution
69 Retirement System may elect to withdraw from membership
70 and join the private pension plan provided by River Valley
71 Child Development Services, Inc.

72 (j) River Valley Child Development Services, Inc., and
73 its successors in interest shall provide for their employees a
74 pension plan in lieu of the Teachers’ Defined Contribution
75 Retirement System on or before the first day of July, two
76 thousand five, and continuing thereafter during the existence
77 of the River Valley Child Development Services, Inc., and its

78 successors in interest. All new employees hired after the
79 thirtieth day of June, two thousand five, shall participate in
80 the pension plan in lieu of the Teachers' Defined
81 Contribution Retirement System.

82 (k) The administrative body of River Valley Child
83 Development Services, Inc., shall, on or before the first day
84 of June, two thousand five, give written notice to each
85 employee who is a member of the Teachers' Defined
86 Contribution Retirement System of the option to withdraw
87 from or remain in the system. The notice shall include a
88 copy of this section and a statement explaining the member's
89 options regarding membership. The notice shall include a
90 statement in plain language giving a full explanation and
91 actuarial projection figures, prepared by an independent
92 actuary, in support of the explanation regarding the
93 individual member's current account balance, vested and
94 nonvested, and his or her projected return upon remaining in
95 the Teacher's Defined Contribution Retirement System until
96 retirement, disability or death, in comparison with the
97 projected return upon withdrawing from the Teachers'
98 Defined Contribution Retirement System and joining a
99 private pension plan provided by River Valley Child
100 Development Center, Inc., and remaining therein until
101 retirement, disability or death. The administrative body shall
102 keep in its records a permanent record of each employee's
103 signature confirming receipt of the notice.

**§18-7B-7a. Plan closed to persons employed for the first time
after June, 2005; former employees.**

1 The retirement system created and established in this
2 article shall be closed and no new members accepted in the
3 system after the thirtieth day of June, two thousand five.
4 Notwithstanding the provisions of sections seven and eight of
5 this article, all persons who are regularly employed for full-
6 time service as a member or an employee whose initial
7 employment commences after the thirtieth day of June, two

8 thousand five, shall become a member of the State Teachers'
9 Retirement System created and established in article seven-a
10 of this chapter: *Provided*, That any person rehired after the
11 thirtieth day of June, two thousand five, shall become a
12 member of the Teachers' Defined Contribution Retirement
13 System created and established in this article, or of the
14 Teachers Retirement System created and established in
15 article seven-a of this chapter, depending upon which system
16 he or she last contributed to while he or she was employed
17 with an employer mandating membership and contributions
18 to one of those plans: *Provided, however*, That a rehired
19 person who thereby becomes a member of the Teachers'
20 Defined Contribution Retirement System may become a
21 member of the Teachers Retirement System within the
22 applicable time periods and upon meeting the requirements
23 provided in article seven-d of this chapter.

**§18-7B-8. Voluntary participation in system; expiration of right
to elect membership in defined contribution
system.**

1 (1) Any employee who is a member of the existing
2 retirement system may, upon written election, voluntarily
3 elect membership in the Teachers' Defined Contribution
4 Retirement System, on a prospective basis, on or after the
5 first day of July, one thousand nine hundred ninety-one. All
6 benefits earned by any employee making a voluntary election
7 under the existing retirement system prior to the voluntary
8 election shall be frozen and made available to that employee
9 upon retirement as provided by the existing retirement
10 system. A member of the existing retirement system who has
11 less than five years of contributing service in the existing
12 retirement system may elect to withdraw his or her
13 contribution plus interest thereon as if the member is
14 terminating employment and upon withdrawal shall deposit
15 the funds in the defined contribution system: *Provided*, That
16 the member's years of contributing service in the existing
17 system shall be applied toward the years of employment

18 service required under section eleven of this article:
19 *Provided, however,* That this election is allowed on a
20 retroactive basis to the first day of July, one thousand nine
21 hundred ninety-one. For the purposes of this section,
22 "frozen" means that the member's salary, years of service and
23 any other factor to determine benefits shall be calculated as
24 of the date that the member elected membership in the
25 defined contribution system and after that date no increase in
26 salary, years of service or any other factor may be used to
27 increase the retirement benefit above that which it would be
28 if a person retired upon the date that the election is made.
29 After having made the election, the employee may not
30 change such election or again become a member of the
31 existing retirement system.

32 (2) Notwithstanding any provision of this section to the
33 contrary, after the thirtieth day of June, two thousand five, no
34 person who is a member of the State Teachers Retirement
35 System may elect membership in the Teachers' Defined
36 Contribution Retirement System.

**ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS'
DEFINED CONTRIBUTION RETIREMENT
SYSTEM TO STATE TEACHERS
RETIREMENT SYSTEM.**

- §18-7D-1. Legislative findings and purpose.
- §18-7D-2. Definitions.
- §18-7D-3. Voluntary transfers.
- §18-7D-4. Notice, education, record-keeping requirements.
- §18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.
- §18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.
- §18-7D-7. Period for affirmative election to transfer; board may contract for professional services.
- §18-7D-8. Results considered final.
- §18-7D-9. Qualified domestic relations orders.
- §18-7D-10. Vesting.
- §18-7D-11. Minimum guarantees.

§18-7D-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares as follows:

2 (1) That the quality of this state's education system is
3 largely dependent upon the quality of its teachers and
4 educational service personnel;

5 (2) That many West Virginia teachers and education
6 service personnel who currently are members of the
7 Teachers' Defined Contribution Retirement System desire to
8 join a defined benefit system, which relieves participants of
9 bearing the risk of investment performance and offers the
10 security of providing participants with advanced knowledge
11 of their anticipated retirement benefit;

12 (3) That other members of the Teachers' Defined
13 Contribution Retirement System remain comfortable with
14 bearing the attendant market risks and performance of their
15 investments associated with managing the individual
16 retirement accounts of that system;

17 (4) That it is in the best interests of the teachers and
18 education service personnel in this state, as well as the state's
19 system of public education as a whole, to permit members of
20 the Teachers' Defined Contribution Retirement System to
21 voluntarily elect membership in the State Teachers
22 Retirement System pursuant to the provisions of this article;
23 and

24 (5) That the prudent and fiscally sound management of
25 the State Teachers Retirement System necessitates that a
26 sufficient number of members of the Teachers' Defined
27 Contribution Retirement System elect to voluntarily transfer
28 their assets to the State Teachers Retirement System in
29 accordance with the provisions of this article.

§18-7D-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) “Actively contributing member of the Teachers’
4 Defined Contribution Retirement System” means a member
5 of that retirement system who was actively contributing to
6 the Teachers’ Defined Contribution Retirement System on
7 the thirty-first day of December, two thousand seven.

8 (2) “Actuarial Reserve” means the Actuarial Reserve
9 Lump Sum Value of the additional service credit being
10 purchased by a member so electing in accordance with the
11 provisions of section six of this article.

12 (3) “Actuarial Reserve Adjusted Salary” means either:

13 (A) For a member with a full year service credit in the
14 fiscal year ending the thirtieth day of June, two thousand
15 seven, the member’s two thousand seven fiscal year salary
16 increased by seven percent;

17 (B) For a member with less than a full year service credit
18 in the fiscal year ending the thirtieth day of June, two
19 thousand seven, the member’s two thousand seven fiscal year
20 salary annualized to a full year based on the partial year
21 service credit increased by seven percent; or

22 (C) For a member without service credit in the fiscal year
23 ending the thirtieth day of June, two thousand seven, the
24 member’s annualized contract salary in effect on the thirty-
25 first day of December, two thousand seven increased by
26 seven percent, or the member’s annual contract salary on the
27 date of rehire if after the thirty-first day of December, two
28 thousand seven.

29 (4) “Actuarial Reserve Benefit Date” means the first day
30 of the month coincident with or next following the date at
31 which the member attains the age of sixty, or the thirtieth day
32 of June, two thousand nine, whichever is later.

33 (5) “Actuarial Reserve Benefit Date Factors” mean the
34 actuarial lump sum value factors based on a life only annuity
35 starting on the Actuarial Reserve Benefit Date applying the
36 1983 Group Annuity Mortality Tables on a seventy-five
37 percent female and a twenty-five percent male blended
38 Unisex basis and interest at seven and one-half percent.

39 (6) “Actuarial Reserve Discount Factor” means the
40 annual discount factor applied for the period between the
41 thirtieth day of June, two thousand nine and the Actuarial
42 Reserve Benefit Date, if any. Such factor based on the State
43 Teachers Retirement System actuarial valuation assumptions
44 shall estimate the impact of mortality, disability, and
45 economic factors for such discount period by application of
46 a net four percent discount rate.

47 (7) “Actuarial Reserve Lump Sum Value” means a single
48 sum amount calculated as: A benefit of two percent
49 multiplied by the Defined Contribution Retirement System
50 service credit being purchased multiplied by the Actuarial
51 Reserve Adjusted Salary; such benefit multiplied by the
52 Actuarial Reserve Benefit Date Factors to determine the lump
53 sum value multiplied by the Actuarial Reserve Discount
54 Factor.

55 (8) “Affirmatively elect to transfer” means the voluntary
56 execution and delivery to the Consolidated Public Retirement
57 Board, by a member of the Teachers’ Defined Contribution
58 Retirement System of a document in a form prescribed by the
59 board that irrevocably authorizes the board to transfer the
60 member and all the member’s assets in the Teachers’ Defined
61 Contribution Retirement System to the State Teachers

62 Retirement System: *Provided*, That delivery of the document
63 to the Consolidated Public Retirement Board may be
64 accomplished through submission of the document to the
65 supervisor of a work site pursuant to section seven of this
66 article: *Provided, however*, That any previous member of the
67 State Teachers Retirement System who voluntarily elected to
68 terminate his or her membership in the State Teachers
69 Retirement System to become a member of the Teachers'
70 Defined Contribution Retirement System and signed an
71 irrevocable transfer request also may affirmatively elect to
72 transfer notwithstanding the prior transfer request.

73 (9) "Assets" means all member contributions and
74 employer contributions made on the member's behalf to the
75 Defined Contribution Retirement System and earnings
76 thereon, less any applicable fees as approved by the board:
77 *Provided*, That if a member has withdrawn or cashed out any
78 amounts, the amounts must have been repaid.

79 (10) "Board" means the Consolidated Public Retirement
80 Board established in article ten-d, chapter five of this code,
81 and its employees.

82 (11) "Date of transfer" means, in the event that sixty-five
83 percent or more of the actively contributing members of the
84 Defined Contribution Retirement System affirmatively elect
85 to transfer to the State Teachers Retirement System within
86 the period provided in section seven of this article, the first
87 day of July, two thousand eight.

88 (12) "Defined Contribution Retirement System" means
89 the Teachers' Defined Contribution Retirement System
90 established in article seven-b of this chapter.

91 (13) "Member" means any person who has an account
92 balance standing to his or her credit in the Teachers' Defined
93 Contribution Retirement System.

94 (14) "Salary" means:

95 (A) For a member contributing to the Defined
96 Contribution Retirement System during the two thousand
97 seven fiscal year, the actual salary earned for the two
98 thousand seven fiscal year divided by the employment
99 service earned in the two thousand seven fiscal year.

100 (B) For a member not contributing to the Defined
101 Contribution Retirement System during the two thousand
102 seven fiscal year, the contract salary on the date of rehire.

103 (15) "State Teachers Retirement System" means the State
104 Teachers Retirement System established in article seven-a of
105 this chapter.

§18-7D-3. Voluntary transfers.

1 (a) In accordance with the provisions of this article, the
2 Consolidated Public Retirement Board shall effect the
3 voluntary transfer of members of the Teachers' Defined
4 Contribution Retirement System to the State Teachers
5 Retirement System.

6 (b) If at least sixty-five percent of actively contributing
7 members of the Teachers' Defined Contribution System
8 affirmatively elect to transfer to the State Teachers
9 Retirement System within the period provided in section
10 seven of this article, then the Consolidated Public Retirement
11 Board shall transfer to the State Teachers Retirement System,
12 effective the first day of July, two thousand eight, all
13 members who affirmatively elected to do so during that
14 period. If at least sixty-five percent of actively contributing
15 members of the Teachers' Defined Contribution Retirement
16 System do not affirmatively elect to transfer to the State
17 Teachers Retirement System within that period, the Defined
18 Contribution Retirement System continues as the retirement

19 system for all members in that system as of the thirtieth day
20 of June, two thousand eight.

§18-7D-4. Notice, education, record-keeping requirements.

1 (a) Commencing not later than the first day of April, two
2 thousand eight, the board shall begin an educational program
3 with respect to the voluntary transfer of actively contributing
4 members of the Teachers' Defined Contribution Retirement
5 System and their assets to the State Teachers Retirement
6 System.

7 (1) This educational program shall address, at a
8 minimum:

9 (A) The law providing for the transfer;

10 (B) The mechanics of the transfer;

11 (C) The process by which an actively contributing
12 member may affirmatively elect to transfer;

13 (D) Relevant dates and time periods;

14 (E) The benefits, potential advantages and potential
15 disadvantages if members fail or refuse to affirmatively elect
16 to transfer;

17 (F) The benefits, potential advantages and potential
18 disadvantages of becoming a member of the State Teachers
19 Retirement System;

20 (G) Potential state and federal tax implications attendant
21 to the various options available to the members;

22 (H) For each member, a summary to include his or her
23 most recent account balance; the average rate of return of the

24 Standard and Poor's and the Lehman U. S.
25 Corporate/Government Index for the previous ten years; the
26 average rate of return of an indexed balanced fund for the
27 previous ten years; the member's projected account balance
28 if he or she retires at age sixty and age sixty-five; the current
29 cost of purchasing a monthly annuity under the Teachers'
30 Defined Contribution Retirement System; the monthly
31 annuity that the member would receive under the Teachers
32 Retirement System if the member chooses to purchase the
33 full service credit and retire at age sixty and age sixty-five;
34 the monthly annuity under the Teachers Retirement System
35 if the participant chooses not to purchase the full service
36 credit and retires at age sixty and age sixty-five, and the
37 potential cost to the member of purchasing the Actuarial
38 Reserve or the one and one-half percent contribution plus
39 accrued interest, as the case may be, not including the cost of
40 obtaining a loan under section five of this article.

41 (I) Any other pertinent information considered relevant
42 by the board.

43 (2) The board shall disseminate the information through:

44 (A) Its website;

45 (B) Computer programs;

46 (C) Written or electronic materials, or both;

47 (D) Classes or seminars, pursuant to subdivision (3) of
48 this subsection;

49 (E) At the discretion of the board, through a program of
50 individual counseling which is optional on the part of the
51 member; and

52 (F) Through any other educational program considered
53 necessary by the board.

54 (3) The Consolidated Public Retirement Board shall
55 provide the information set forth in subdivision (1) of this
56 subsection through classes or seminars in accordance with the
57 following:

58 (A) The Consolidated Public Retirement Board shall
59 provide training for conducting the classes or seminars for
60 employees of county boards, for employees of state
61 institutions of higher education or for any other person that
62 the county board or the institution of higher learning
63 determines, with the approval of the Consolidated Public
64 Retirement Board, would be appropriate to conduct the
65 classes or seminars;

66 (B) Each county board shall require at least two
67 representatives to attend the training. The representatives
68 must be approved by the Consolidated Public Retirement
69 Board prior to attending the Board's training class;

70 (C) Each county board shall ensure that each employee
71 of that county board who is a member of the Teachers'
72 Defined Contribution Retirement System has had an
73 opportunity to attend a class or a seminar on the topics set
74 forth in subdivision (1) of this subsection at his or her work
75 site during his or her workday;

76 (D) The class or seminar shall be conducted by any
77 person who attended the training or by a representative of a
78 school personnel organization that the Consolidated Public
79 Retirement Board considers qualified to conduct the class or
80 seminar;

81 (E) The classes or seminars may be conducted at the time
82 allocated for professional activities for teachers on
83 instructional support and enhancement days, before school,
84 after school and at any other time during an employee's work
85 day: *Provided*, That the classes or seminars may interfere

86 with instructional time only if no other time is available to
87 conduct the classes or seminars;

88 (F) Each county board shall ensure that informational
89 booths are set up at each work site under the jurisdiction of
90 the county board and that the booths are attended on a
91 rotating basis by an person trained to conduct the classes or
92 seminars or by a representative of a school personnel
93 organization that the Consolidated Public Retirement Board
94 considers qualified to attend the booth;

95 (G) During the period provided by this section for the
96 educational program, each county board and its
97 superintendent shall allow representatives of the
98 Consolidated Public Retirement Board entry upon the
99 premises of each school in this state where the Consolidated
100 Public Retirement Board determines appropriate on at least
101 one occasion for the duration of at least sixty minutes during
102 regular school hours to provide educational programs as the
103 Consolidated Public Retirement Board determines
104 appropriate for members of the Teachers' Defined
105 Contribution Retirement System;

106 (b) The board shall provide each actively contributing
107 member with a copy of the written or electronic educational
108 materials and with a copy of the notice of the opportunity to
109 affirmatively elect to transfer, to the extent deliverable, by
110 mailing a copy thereof, first class postage prepaid, through
111 the United States mails to the most current mailing address
112 provided by the member to the board. The board is not
113 required to deliver, nor is any member entitled to delivery of,
114 these materials by any other means. The notice shall provide
115 full and appropriate disclosure regarding the process by
116 which a member may affirmatively elect to transfer,
117 including the period of the opportunity to affirmatively elect
118 to transfer.

119 (c) It is the responsibility of each member of the
120 Teachers' Defined Contribution Retirement System to keep
121 the board informed of his or her current address. A member
122 who does not is considered to have waived his or her right to
123 receive any information from the board with respect to the
124 purposes of this article.

125 (d) Once the board has complied with the provisions of
126 this section, each actively contributing member of the
127 Teachers' Defined Contribution Retirement System is
128 considered to have actual notice of the opportunity to
129 affirmatively elect to transfer and all matters pertinent
130 thereto.

131 (e) The executive director of the Consolidated Public
132 Retirement Board shall report to the Governor, the President
133 of the Senate, and the Speaker of the House of Delegates no
134 later than April, 1, two thousand eight, a plan for the
135 execution of the education and outreach requirements set
136 forth in this section.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

1 (a) If at least sixty-five percent of actively contributing
2 members of the Teachers' Defined Contribution Retirement
3 System affirmatively elect to transfer to the State Teachers
4 Retirement System within the period provided in section
5 seven of this article, then the Consolidated Public Retirement
6 Board shall transfer the members and all properties held in
7 the Teachers' Defined Contribution Retirement System's
8 Trust Fund in trust for those members who affirmatively
9 elected to do so during that period to the State Teachers
10 Retirement System, effective on the first day of July, two
11 thousand eight.

12 (b) The board shall make available to each member a loan
13 for the purpose of paying all or part of the Actuarial Reserve,
14 or if available in accordance with the provisions of
15 subsection (d), section six of this article, the one and one-half
16 percent contribution for service in the Teachers' Defined
17 Contribution System to receive additional service credit in
18 the State Teachers Retirement System for service in the
19 Teachers' Defined Contribution Retirement System pursuant
20 to section six of this article. The loan shall be offered in
21 accordance with the provisions of section thirty-four, article
22 seven-a of this chapter.

23 (1) Notwithstanding any provision of this code, rule or
24 policy of the board to the contrary, the interest rate on any
25 loan may not exceed seven and one-half percent per annum.
26 The total amount borrowed may not exceed forty thousand
27 dollars: *Provided*, That the loan may not exceed the
28 limitations of the Internal Revenue Code Section 72(p).

29 (2) In the event a loan made pursuant to this section is
30 used to pay the Actuarial Reserve or the one and one-half
31 percent contribution, as the case may be, the board shall
32 make any necessary adjustments at the time the loan is made.

33 (3) The board shall make this loan available until the
34 thirtieth day of June, two thousand nine.

35 (c) The board shall develop and institute a payroll
36 deduction program for repayment of the loan established in
37 this section.

38 (d) If at least sixty-five percent of actively contributing
39 members of the Teachers' Defined Contribution Retirement
40 System affirmatively elect to transfer to the State Teachers
41 Retirement System within the period provided in section
42 seven of this article:

43 (1) As of the first day of July, two thousand eight, the
44 transferred members' contribution rate becomes six percent
45 of his or her salary or wages; and

46 (2) All transferred members who work one hour or more
47 and who make a contribution into the State Teachers
48 Retirement System on or after the first day of July, two
49 thousand eight, are governed by the provisions of article
50 seven-a of this chapter, subject to the provisions of this
51 article.

52 (e) Subject to the provisions of subdivision (1) of this
53 subsection, if a member has withdrawn or cashed out part of
54 his or her assets, that member will not receive credit for those
55 moneys cashed out or withdrawn. The board shall make a
56 determination as to the amount of credit a member loses
57 based on the periods of time and the amounts he or she has
58 withdrawn or cashed out, which shall be expressed as a loss
59 of service credit.

60 (1) A member may repay those amounts he or she
61 previously cashed out or withdrew, along with interest as
62 determined by the board, and receive the same credit as if the
63 withdrawal or cash-out never occurred. To receive full credit
64 for the cashed-out or withdrawn amounts being repaid to the
65 State Teachers Retirement System, the member also shall pay
66 the actuarial reserve, or the one and one-half percent
67 contribution, as the case may be, pursuant to section six of
68 this article.

69 (2) The loan provided in this section is not available to
70 members to repay previously cashed out or withdrawn
71 moneys.

72 (3) If the repayment occurs five or more years following
73 the cash-out or withdrawal, the member also shall repay any
74 forfeited employer contribution account balance along with
75 interest determined by the board.

76 (f) Notwithstanding any provision of subsection (e) to the
77 contrary, if a member has cashed out or withdrawn any of his
78 or her assets after the last day of June, two thousand three,
79 and that member chooses to repurchase that service after the
80 thirtieth day of June, two thousand eight, the member shall
81 repay the previously distributed amounts and any applicable
82 interest to the State Teachers Retirement System.

83 (g) Any service in the State Teachers Retirement System
84 a member has before the date of the transfer is not affected by
85 the provisions of this article.

86 (h) The board shall take all necessary steps to see that the
87 voluntary transfers of persons and assets authorized by this
88 article do not affect the qualified status with the Internal
89 Revenue Service of either retirement plan.

**§18-7D-6. Service credit in State Teachers Retirement System
following transfer; conversion of assets;
adjustments.**

1 (a) Any member who has affirmatively elected to transfer
2 to the State Teachers Retirement System within the period
3 provided in section seven of this article whose assets have
4 been transferred from the Teachers' Defined Contribution
5 Retirement System to the State Teachers Retirement System
6 pursuant to the provisions of this article and who has not
7 made any withdrawals or cash-outs from his or her assets is,
8 depending upon the percentage of actively contributing
9 members affirmatively electing to transfer, entitled to service
10 credit in the State Teachers Retirement System in accordance
11 with the provisions of subsections (c) or (d) of this section.

12 (b) Any such member who has made withdrawals or cash
13 outs will receive service credit based upon the amounts
14 transferred. The board shall make the appropriate adjustment
15 to the service credit the member will receive.

16 (c) If at least sixty-five percent but less than seventy-five
17 percent of actively contributing members of the Teachers'
18 Defined Contribution Retirement System affirmatively elect
19 to transfer to the State Teachers Retirement System within
20 the period provided in section seven of this article, for any
21 member of the Defined Contribution Retirement System who
22 elects to transfer to the State Teachers Retirement System, his
23 or her service credit in the State Teachers Retirement System
24 is determined as follows:

25 (1) For any member affirmatively electing to transfer, the
26 member's State Teachers Retirement System credit shall be
27 seventy-five percent of the member's Teachers' Defined
28 Contribution Retirement System service credit, less any
29 service previously withdrawn by the member or due to a
30 qualified domestic relations order and not repaid;

31 (2) To receive full credit in the State Teachers Retirement
32 System for service in the Teachers' Defined Contribution
33 Retirement System for which assets are transferred,
34 transferring members shall have the option to pay into the
35 State Teachers Retirement System the Actuarial Reserve, as
36 defined in section two of this article, by no later than the
37 thirtieth day of June, two thousand nine.

38 (d) If at least seventy-five percent of actively contributing
39 members of the Teachers' Defined Contribution Retirement
40 System affirmatively elect to transfer to the State Teachers
41 Retirement System within the period provided in section
42 seven of this article, for any member of the Defined
43 Contribution Retirement System who elects to transfer to the
44 State Teachers Retirement System, his or her service credit
45 in the State Teachers Retirement System is determined as
46 follows:

47 (1) For any member affirmatively electing to transfer, the
48 member's State Teachers Retirement System credit shall be

49 seventy-five percent of the member's Teachers' Defined
50 Contribution Retirement System service credit, less any
51 service previously withdrawn by the member or due to a
52 qualified domestic relations order and not repaid;

53 (2) To receive full credit in the State Teachers Retirement
54 System for service in the Teachers' Defined Contribution
55 Retirement System for which assets are transferred, members
56 who affirmatively elected to transfer shall pay into the State
57 Teachers Retirement System a one and one-half percent
58 contribution. This contribution shall be calculated as one and
59 one-half percent of the member's estimated total earnings for
60 which assets are transferred, plus interest of four percent per
61 annum accumulated from the date of the member's initial
62 participation in the Defined Contribution Retirement System.

63 (A) For a member contributing to the Defined
64 Contribution Retirement System at any time during the two
65 thousand eight fiscal year and commencing membership in
66 the State Teachers Retirement System on the first day of July,
67 two thousand eight:

68 (i) The estimated total earnings shall be calculated based
69 on the member's salary and the member's age nearest birthday
70 on the thirtieth day of June, two thousand eight;

71 (ii) This calculation shall apply both an annual backward
72 salary scale from that date for prior years' salaries and a
73 forward salary scale for the salary for the two thousand eight
74 fiscal year.

75 (B) The calculations in paragraph (A) of this subdivision
76 are based upon the salary scale assumption applied in the
77 West Virginia Teachers Retirement System Actuarial
78 Valuation as of the first day of July, two thousand seven,
79 prepared for the Consolidated Public Retirement Board. This
80 salary scale shall be applied regardless of breaks in service.

81 (e) All service previously transferred from the State
82 Teachers Retirement System to the Teachers' Defined
83 Contribution Retirement System is considered Teachers'
84 Defined Contribution Retirement System service for the
85 purposes of this article.

86 (f) Notwithstanding any provision of this code to the
87 contrary, the retirement of a member who becomes eligible
88 to retire after the member's assets are transferred to the State
89 Teachers Retirement System pursuant to the provisions of
90 this article may not commence prior to the first day of
91 September, two thousand eight: *Provided*, That the
92 Consolidated Public Retirement Board may not retire any
93 member who is eligible to retire during the school year
94 beginning two thousand eight during the school year two
95 thousand eight unless the member has provided a written
96 notice to his or her county board of education by the first day
97 of July, two thousand eight, of his or her intent to retire.

**§18-7D-7. Period for affirmative election to transfer; board
may contract for professional services.**

1 (a) The board shall provide the members of the Teachers'
2 Defined Contribution Retirement System an opportunity to
3 voluntarily execute and deliver to the Consolidated Public
4 Retirement Board, or its designee, a written document in a
5 form prescribed by the board that irrevocably authorizes the
6 board to transfer the member and all the member's assets in
7 the Teachers' Defined Contribution Retirement System to the
8 State Teachers Retirement System in accordance with the
9 provisions of this article.

10 (b) If at least sixty-five percent of actively contributing
11 members of the Teachers' Defined Contribution Retirement
12 System affirmatively elect to transfer to the State Teachers
13 Retirement System:

14 (1) The Consolidated Public Retirement Board shall, for
15 each member who affirmatively elected to transfer as
16 provided in this section, transfer the assets held in the
17 Teachers' Defined Contribution Retirement System's Trust
18 Fund in trust for that member to the State Teachers
19 Retirement System on the first day of July, two thousand
20 eight;

21 (2) On the first day of July, two thousand eight, each
22 member who so elected becomes a member of the State
23 Teachers Retirement System and after working one or more
24 hours and contributing to the State Teachers Retirement
25 System is entitled to the benefits of the State Teachers
26 Retirement System; and

27 (3) Each such member is governed by the provisions of
28 the State Teachers Retirement System subject to the
29 provisions of this article.

30 (c) If fewer than sixty-five percent of actively
31 contributing members of the Teachers' Defined Contribution
32 Retirement System affirmatively elect to transfer to the State
33 Teachers Retirement System, the transfers described in this
34 section shall not occur.

35 (d) Any person who has one dollar or more in assets in
36 the Teachers' Defined Contribution Retirement System on
37 the last day of December, two thousand seven, may and is
38 eligible to affirmatively elect to transfer to the State Teachers
39 Retirement System as provided in this section. For purposes
40 of this article:

41 (1) The tabulation of the percentage required for transfer
42 as required in this article shall only include documents
43 affirmatively electing to transfer submitted under the
44 provisions of this subsection by those who are actively
45 contributing members of the Teachers' Defined Contribution

46 Retirement System as that term is defined in section two of
47 this article; and

48 (2) Notwithstanding the opportunity to submit documents
49 affirmatively electing to transfer extended by this article to
50 members other than those who are actively contributing
51 members of the Teachers' Defined Contribution Retirement
52 System, there shall be no duty or other obligation on the part
53 of the board to provide any education, information or notice
54 regarding matters contained in this article to members who
55 are not actively contributing members of the Teachers'
56 Defined Contribution Retirement System regarding any
57 matter described in this article, nor any right on the part of
58 those other members to receive the same.

59 (e) Notwithstanding any other provision of this code to
60 the contrary, the board may do all things necessary and
61 convenient to maintain the Teachers' Defined Contribution
62 Retirement System and the State Teachers Retirement System
63 during the transitional period and may retain the services of
64 the professionals it considers necessary to do so. The board
65 may also retain the services of professionals necessary to:

66 (1) Assist in the preparation of educational materials;

67 (2) Assist in the educational process;

68 (3) Assist in the process for submission of the documents
69 whereby members may affirmatively elect to transfer; and

70 (4) Ensure compliance with all relevant state and federal
71 laws.

72 (f) Due to the time constraints inherent in the initial
73 processes established for the submission of documents
74 affirmatively electing to transfer set forth in this article in
75 specific, and due to the nature of the professional services

76 required by the Consolidated Public Retirement Board in
77 general, the provisions of article three, chapter five-a of this
78 code, do not apply to any materials, contracts for any
79 actuarial services, investment services, legal services or other
80 professional services authorized under the provisions of this
81 article and the provisions of article six, chapter twenty-nine
82 do not apply to any employment of or contracting for
83 personnel by the board for the purposes of implementing the
84 provisions of this article.

85 (g) The submission of the documents whereby members
86 may affirmatively elect to transfer may be held through any
87 method the board determines is in the best interest of the
88 members: *Provided*, That for members of the Teachers'
89 Defined Contribution Retirement System, the submission of
90 the documents whereby those members elect to transfer shall
91 be pursuant to the procedure established by the Consolidated
92 Public Retirement Board set forth in subsection (j) of this
93 section.

94 (h) The period for submission of the documents whereby
95 members may affirmatively elect to transfer shall begin not
96 later than the first day of April, two thousand eight. The
97 board shall ascertain the results of the submissions not later
98 than the last day of May, two thousand eight. The board shall
99 certify the results of the submissions to the Governor, the
100 Legislature and the members not later than the fifth day of
101 June, two thousand eight.

102 (i) The submission period terminates and elections to
103 transfer may not be accepted from a member after the twelfth
104 day of May, two thousand eight, subject to the following:

105 (1) If elections to transfer are permitted through the mail,
106 any submission postmarked later than the twelfth day of May,
107 two thousand eight, is void and may not be counted;

108 (2) If elections to transfer are delivered to a supervisor on
109 selection day or on or before the ninth day of May, two
110 thousand eight, any submission postmarked or deposited with
111 a commercial carrier later than the thirteenth day of May, two
112 thousand eight, is void and may not be counted: *Provided,*
113 That delivery by mail must be by certified mail, return receipt
114 requested or delivery by commercial courier that requires
115 written confirmation by the board of delivery;

116 (3) The fifth day of May, two thousand eight, is selection
117 day upon which each county board and superintendent shall
118 provide an opportunity in each school within the county for
119 members of the Teachers' Defined Contribution System to
120 affirmatively elect to transfer.

121 (j) The Consolidated Public Retirement Board shall
122 collaborate with the state superintendent, the Chancellor for
123 Higher Education and the Chancellor for Community and
124 Technical College Education to establish a procedure
125 whereby all actively contributing members of the Teachers'
126 Defined Contribution Retirement System may deliver to the
127 Consolidated Public Retirement Board or its designee the
128 written document authorizing transfer through a supervisor
129 at each work site where any contributing member of the
130 Defined Contribution Retirement System is employed. The
131 procedure shall include at least the following:

132 (1) The supervisor at each work site is responsible for
133 collecting the written documents authorizing the transfer
134 from all actively contributing members of the Teachers'
135 Defined Contribution Retirement System employed at the
136 work site who choose to submit the written document. The
137 supervisor shall record the receipt of all written documents
138 authorizing transfer, shall direct the member submitting the
139 written document to initial a receipt log and shall issue a
140 receipt to the member submitting the written document.

141 (2) On and after the sixth day of May, two thousand
142 eight, but on or before the ninth day of May, two thousand
143 eight, the supervisor at the work site shall make reasonable
144 efforts to contact verbally and in writing all actively
145 contributing members of the Teachers' Defined Contribution
146 Retirement System employed at the work site that have not
147 submitted their written documents as of that date to remind
148 those members of the upcoming deadline for submitting their
149 written document authorizing transfer: *Provided*, That failure
150 of the supervisor to make contact with any of those members
151 shall not be a basis for a cause of action to allow a member
152 to transfer after the period provided in this section or for any
153 other cause of action.

154 (3) The supervisor at each work site shall forward all of
155 the written documents to the Consolidated Public Retirement
156 Board, or its designee, through certified mail, or delivery by
157 commercial courier that requires written confirmation by the
158 board of delivery, no later than the thirteenth day of May,
159 two thousand eight. The work site supervisor shall inform
160 the Consolidated Public Retirement Board of all of the
161 written documents received each day so that the board, or its
162 designee, can record which members of the Teachers'
163 Defined Contribution Retirement System have submitted
164 their written documents authorizing transfer pursuant to
165 subsection (k) of this section.

166 (4) For the purposes of this subdivision, the principal of
167 a school with any of grades prekindergarten through twelve
168 is the work site supervisor. For the purposes of this
169 subdivision, for any work site under the jurisdiction of the
170 Higher Education Policy Commission or the West Virginia
171 Council for Community and Technical College Education,
172 the human resource administrator or other designee may be
173 considered the work site supervisor. In any case where the
174 person who is the work site supervisor is in question, the
175 state board, the Chancellor for Higher Education or the

176 Chancellor for Community and Technical College Education,
177 whichever entity has jurisdiction over the work site, shall
178 designate the supervisor.

179 (5) The state board, the Chancellor for Higher Education
180 and the Chancellor for Community and Technical College
181 Education shall ascertain the names of all work site
182 supervisors under their jurisdiction and transmit a list of the
183 names of the work site supervisors to the Consolidated Public
184 Retirement Board on or before the thirty-first day of March,
185 two thousand eight.

186 (k) The Consolidated Public Retirement Board, or its
187 designee, shall record the receipt of all written documents
188 authorizing the transfer so that it knows the percentage of
189 contributing members of the Teachers' Defined Contribution
190 Retirement System that have submitted the written
191 documents by work site and by county.

§18-7D-8. Results considered final.

1 Every member of the Teachers' Defined Contribution
2 Retirement System is considered to have made an informed,
3 educated, knowing and voluntary decision and choice with
4 respect to the opportunities provided by this article to transfer
5 membership and assets to the State Teachers Retirement
6 System. Each member who failed or refused to affirmatively
7 elect to transfer is also considered to have made an informed,
8 educated, knowing and voluntary decision and choice with
9 respect thereto and is bound by the results thereof, except as
10 may be required by federal law.

§18-7D-9. Qualified domestic relations orders.

1 Any transferring member having a qualified domestic
2 relations order against his or her defined contribution account
3 is allowed to repurchase service in the State Teachers

4 Retirement System. The member shall repay any moneys
5 previously distributed to the alternate payee along with the
6 interest as set by the board. The member shall repay by the
7 last day of June, two thousand fourteen. The provisions of
8 this section are void and of no effect if there is no transfer
9 from the Teachers' Defined Contribution Retirement System
10 to the State Teachers Retirement System. An alternate payee
11 is not, solely as a result of that status, a member of either the
12 Teachers' Defined Contribution Retirement System or the
13 State Teachers Retirement System for any purpose under the
14 provisions of this article and no interest held by the alternate
15 payee is transferred to the State Teachers Retirement System
16 pursuant thereto.

§18-7D-10. Vesting.

1 Any member who works one hour or more after his or her
2 assets are transferred to the State Teachers Retirement
3 System pursuant to this article is subject to the vesting
4 schedule set forth in article seven-a of this chapter: *Provided*,
5 That if a member is vested under the Teachers' Defined
6 Contribution Retirement System and his or her last
7 contribution was not made to the State Teachers Retirement
8 System, that member is subject to the vesting schedule set
9 forth in article seven-b of this chapter.

§18-7D-11. Minimum guarantees.

1 (a) Any member of the Teachers' Defined Contribution
2 Retirement System who works one hour or more and who has
3 made a contribution to the State Teachers Retirement System
4 after his or her assets are transferred to the State Teachers
5 Retirement System pursuant to this article, is guaranteed a
6 minimum benefit equal to his or her member contributions
7 plus the vested portion of employer contributions made on
8 his or her behalf to the Teachers' Defined Contribution
9 Retirement System, plus any earnings thereon, as of the

10 thirtieth day of June, two thousand eight, as stated by the
11 board.

12 (b) A member of the Teachers' Defined Contribution
13 Retirement System who works one hour or more and who has
14 made contributions to the State Teachers Retirement System
15 after his or her assets are transferred to the State Teachers
16 Retirement System, upon eligibility to receive a distribution
17 under article seven-a of this chapter, shall have at a minimum
18 the following three options:

19 (1) The right to receive an annuity from the State
20 Teachers Retirement System based upon the provisions of
21 article seven-a of this chapter;

22 (2) The right to withdraw from the State Teachers
23 Retirement System and receive his or her member
24 accumulated contributions in the State Teachers Retirement
25 System, plus refund interest thereon, as set forth in article
26 seven-a of this chapter; or

27 (3) The right to withdraw and receive his or her member
28 contributions plus the vested portion of employer
29 contributions made on his or her behalf to the Teachers'
30 Defined Contribution Retirement System, plus any earnings
31 thereon as of the date his or her assets are transferred to the
32 State Teachers Retirement System pursuant to this article, as
33 determined by the board pursuant to the vesting provisions of
34 article seven-a of this chapter. This amount shall be
35 distributed in a lump sum.

36 (c) Any member of the Teachers' Defined Contribution
37 Retirement System who does not work one hour or more and
38 who makes no contribution to the State Teachers Retirement
39 System after his or her assets are transferred to the State
40 Teachers Retirement System pursuant to this article, is
41 guaranteed the receipt of the amount in his or her total vested

42 account in the Teachers' Defined Contribution Retirement
43 System on the date of the transfer, plus interest thereon, at
44 four percent accruing from the date of the transfer. This
45 amount shall be distributed in a lump sum: *Provided*, That
46 no benefits may be obtained under this subsection solely by
47 the reciprocity provisions of sections three, four, and six,
48 article thirteen, chapter five of this code.

CHAPTER 8

**(H.B. 102 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 16, 2008; in effect June 30, 2008.]
[Approved by the Governor on April 1, 2008.]

AN ACT to amend and reenact §18B-2A-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-3C-13 of said code, relating to higher education generally; establishing boards of governors for independent community and technical colleges; providing for the initial appointment to and the terms of office of members of the boards of governors for independent community and technical colleges; relating to the appointment and membership of institutional boards of governors of state institutions of higher education; and providing for the election of a chairperson of an institutional board of governors during the fiscal year beginning on the first day of July, two thousand eight.

Be it enacted by the Legislature of West Virginia:

That §18B-2A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-3C-13 of said code be amended and reenacted, all to read as follows:

Article

2A. Institutional Boards of Governors.

3C. Community and Technical College System.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment; establishment of boards for independent community and technical colleges.

1 (a) A board of governors is continued at each of the
2 following institutions: Bluefield State College, Blue Ridge
3 Community and Technical College, Concord University,
4 Eastern West Virginia Community and Technical College,
5 Fairmont State University, Glenville State College, Marshall
6 University, New River Community and Technical College,
7 Shepherd University, Southern West Virginia Community
8 and Technical College, West Liberty State College, West
9 Virginia Northern Community and Technical College, the
10 West Virginia School of Osteopathic Medicine, West
11 Virginia State University and West Virginia University.

12 (b) *Independent community and technical colleges*
13 *established --*

14 Effective the first day of July, two thousand eight, the
15 board of advisors is abolished and a board of governors is
16 established for Marshall Community and Technical College;
17 Pierpont Community and Technical College, formerly a
18 division of Fairmont State University; The Community and
19 Technical College at West Virginia University Institute of
20 Technology; West Virginia State Community and Technical
21 College; and West Virginia University at Parkersburg.

22 (A) In making the initial appointments to these boards of
23 governors, the Governor may appoint those persons who are
24 lay members of the boards of advisors by the thirtieth day of
25 June, two thousand eight.

26 (B) At the end of the initial term, and thereafter, an
27 appointment to fill a vacancy on the board or reappointment
28 of a member who is eligible to serve an additional term is
29 made in accordance with the provisions of this section.

30 (c) The institutional boards of governors for Marshall
31 University and West Virginia University consist of sixteen
32 persons. The boards of governors of the other state
33 institutions of higher education consist of twelve persons.

34 (d) Each board of governors includes the following
35 members:

36 (1) A full-time member of the faculty with the rank of
37 instructor or above duly elected by the faculty of the
38 respective institution;

39 (2) A member of the student body in good academic
40 standing, enrolled for college credit work and duly elected by
41 the student body of the respective institution;

42 (3) A member from the institutional classified employees
43 duly elected by the classified employees of the respective
44 institution; and

45 (4) For the institutional Board of Governors at Marshall
46 University, thirteen lay members appointed by the Governor,
47 by and with the advice and consent of the Senate, pursuant to
48 this section.

49 (5) For the institutional Board of Governors at West
50 Virginia University, twelve lay members appointed by the

51 Governor, by and with the advice and consent of the Senate,
52 pursuant to this section and, additionally, the chairperson of
53 the Board of Visitors of West Virginia University Institute of
54 Technology.

55 (6) For each institutional board of governors of the other
56 state institutions of higher education, nine lay members
57 appointed by the Governor, by and with the advice and
58 consent of the Senate, pursuant to this section.

59 (e) Of the nine members appointed by the Governor, no
60 more than five may be of the same political party. Of the
61 thirteen members appointed by the Governor to the governing
62 board of Marshall University, no more than eight may be of
63 the same political party. Of the twelve members appointed
64 by the Governor to the governing board of West Virginia
65 University, no more than seven may be of the same political
66 party. Of the nine members appointed by the Governor, at
67 least six shall be residents of the state. Of the thirteen
68 members appointed by the Governor to the governing board
69 of Marshall University, at least eight shall be residents of the
70 state. Of the twelve members appointed by the Governor to
71 the governing board of West Virginia University, at least
72 eight shall be residents of the state.

73 (f) The student member serves for a term of one year.
74 Each term begins on the first day of July.

75 (g) The faculty member serves for a term of two years.
76 Each term begins on the first day of July. Faculty members
77 are eligible to succeed themselves for three additional terms,
78 not to exceed a total of eight consecutive years.

79 (h) The member representing classified employees serves
80 for a term of two years. Each term begins on the first day of
81 July. Members representing classified employees are eligible
82 to succeed themselves for three additional terms, not to
83 exceed a total of eight consecutive years.

84 (i) The appointed lay citizen members serve terms of up
85 to four years each and are eligible to succeed themselves for
86 no more than one additional term.

87 (j) A vacancy in an unexpired term of a member shall be
88 filled for the unexpired term within thirty days of the
89 occurrence of the vacancy in the same manner as the original
90 appointment or election. Except in the case of a vacancy, all
91 elections shall be held and all appointments shall be made no
92 later than the thirtieth day of June preceding the
93 commencement of the term. Each board of governors shall
94 elect one of its appointed lay members to be chairperson in
95 June of each year except for the fiscal year beginning on the
96 first day of July, two thousand eight only, when the board
97 shall elect the chairperson in July. A member may not serve
98 as chairperson for more than four consecutive years.

99 (k) The appointed members of the institutional boards of
100 governors serve staggered terms of up to four years except
101 that four of the initial appointments to the governing boards
102 of community and technical colleges which become
103 independent on the first day of July, two thousand eight are
104 for terms of two years and five of the initial appointments are
105 for terms of four years.

106 (l) A person is ineligible for appointment to membership
107 on a board of governors of a state institution of higher
108 education under the following conditions:

109 (1) For a baccalaureate institution or university, a person
110 is ineligible for appointment who is an officer, employee or
111 member of any other board of governors, an employee of any
112 institution of higher education; an officer or member of any
113 political party executive committee; the holder of any other
114 public office or public employment under the government of
115 this state or any of its political subdivisions; an employee of
116 any affiliated research corporation created pursuant to article
117 twelve of this chapter; an employee of any affiliated

118 foundation organized and operated in support of one or more
119 state institutions of higher education; or a member of the
120 Council or Commission. This subsection does not prevent
121 the representative from the faculty, classified employees,
122 students, or the superintendent of a county board of education
123 from being members of the governing boards.

124 (2) For a community and technical college, a person is
125 ineligible for appointment who is an officer, employee or
126 member of any other board of governors; a member of a
127 board of visitors of any public institution of higher education;
128 an employee of any institution of higher education; an officer
129 or member of any political party executive committee; the
130 holder of any other public office, other than an elected county
131 office, or public employment, other than employment by the
132 county board of education, under the government of this state
133 or any of its political subdivisions; an employee of any
134 affiliated research corporation created pursuant to article
135 twelve of this chapter; an employee of any affiliated
136 foundation organized and operated in support of one or more
137 state institutions of higher education; or a member of the
138 Council or Commission. This subsection does not prevent
139 the representative from the faculty, classified employees,
140 students, or chairpersons of the boards of advisors from being
141 members of the governing boards.

142 (m) Before exercising any authority or performing any
143 duties as a member of a governing board, each member shall
144 qualify as such by taking and subscribing to the oath of office
145 prescribed by section five, article IV of the Constitution of
146 West Virginia and the certificate thereof shall be filed with
147 the Secretary of State.

148 (n) A member of a governing board appointed by the
149 Governor may not be removed from office by the Governor
150 except for official misconduct, incompetence, neglect of duty
151 or gross immorality and then only in the manner prescribed by law
152 for the removal of the state elective officers by the Governor.

153 (o) The president of the institution shall make available
154 resources of the institution for conducting the business of its
155 board of governors. The members of the board of governors
156 serve without compensation, but are reimbursed for all
157 reasonable and necessary expenses actually incurred in the
158 performance of official duties under this article upon
159 presentation of an itemized sworn statement of expenses. All
160 expenses incurred by the board of governors and the
161 institution under this section are paid from funds allocated to
162 the institution for that purpose.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-13. Legislative intent; Pierpont Community and Technical College established as independent state institution of higher education; governing board; institutional organization, structure, accreditation status.

1 (a) The intent of the Legislature in enacting this section
2 is to provide for the most effective education delivery system
3 for community and technical education programs to the entire
4 region to be served by Pierpont Community and Technical
5 College and to focus the institutional mission on achieving
6 state goals, objectives, priorities, and essential conditions as
7 established in articles one, one-d, and three-c of this chapter.

8 (b) Pierpont Community and Technical College is
9 established as an independent state institution of higher
10 education. Any reference in this code to Fairmont State
11 Community and Technical College or to Pierpont
12 Community and Technical College, a division of Fairmont
13 State University, means the independent state institution of
14 higher education known as Pierpont Community and
15 Technical College.

16 (c) Effective the first day of July, two thousand eight, the
17 board of advisors for Pierpont Community and Technical
18 College is abolished and a governing board for that
19 institution is appointed subject to the provisions of article
20 two-a of this chapter. The administrative head of Pierpont
21 Community and Technical College on the thirtieth day of
22 June, two thousand eight, is the president of the independent
23 community and technical college subject to the provisions of
24 section five of this article.

25 (d) In the delivery of community and technical college
26 education and programs, Pierpont Community and Technical
27 College shall adhere to all provisions set forth in this code
28 and rules promulgated by the Council for the delivery of
29 education and programs, including, but not limited to,
30 Council review and approval of academic programs,
31 institutional compacts, master plans and tuition and fee rates,
32 including capital fees.

33 (e) Pierpont Community and Technical College shall
34 pursue independent accreditation status and the board of
35 governors of the community and technical college shall
36 provide through contractual arrangement for the
37 administration and operation of Pierpont Community and
38 Technical College by Fairmont State University while the
39 community and technical college seeks appropriate
40 independent accreditation. The contractual arrangement may
41 not be implemented until approved by the Council and shall
42 include provisions to ensure that the programs offered at
43 Pierpont Community and Technical College are accredited
44 while independent accreditation is being sought. Fairmont
45 State University shall continue to provide services to the
46 community and technical college which the community and
47 technical college or the Council considers necessary or
48 expedient in carrying out its mission under the terms of an
49 agreement between the two institutions pursuant to the
50 provisions of section twelve of this article.

51 (f) The Council has the authority and the duty to take all
52 steps necessary to assure that the institution acquires
53 independent accreditation status as quickly as possible. If the
54 community and technical college fails to achieve independent
55 accreditation by the first day of July, two thousand eleven,
56 the Council shall sever any contractual agreement between
57 Pierpont Community and Technical College and Fairmont
58 State University and assign the responsibility for achieving
59 independent accreditation to another state institution of
60 higher education.

CHAPTER 9

**(H.B. 103 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed March 16, 2008; in effect from passage.]
[Approved by the Governor on March 21, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22j; and to amend said code by adding thereto a new section, designated §18-7A-26u, all relating to the Public Employees Retirement System and the State Teachers Retirement System; and providing for a one-time bonus payment for certain annuitants.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10-22j; and that said code be amended by adding thereto a new section, designated §18-7A-26u, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
18. **Education.**

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

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

**§5-10-22j. One-time bonus payment for certain annuitants
effective July 1, 2008.**

1 (a) As an additional bonus payment to other retirement
2 allowances provided, a one-time bonus payment to retirement
3 benefits shall be paid to retirants of the system as provided in
4 subsection (b) of this section. The one-time bonus payment
5 shall equal six hundred dollars and shall be paid on the
6 twenty-fifth day of July, two thousand eight.

7 (b) The one-time bonus payment provided by this section
8 applies to any retirant with at least twenty years of credited
9 service who currently receives an annual retirement annuity
10 of not more than seven thousand two hundred dollars. This
11 bonus payment is subject to any applicable limitations under
12 section 415 of the Internal Revenue Code of 1986, as
13 amended.

14 (c) The one-time bonus payment provided by this section
15 shall be payable pro rata to any beneficiaries of a qualifying
16 retirant who currently receive an annuity or other benefit
17 payable by the system.

CHAPTER 18. EDUCATION.**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-26u. One-time bonus payment for certain annuitants effective July 1, 2008.**

1 (a) As an additional bonus payment to other retirement
2 allowances provided, a one-time bonus payment to retirement
3 benefits shall be paid to retirants of the retirement system as
4 provided in subsection (b) of this section. The one-time
5 bonus payment shall equal six hundred dollars and shall be
6 paid on the twenty-fifth day of July, two thousand eight.

7 (b) The one-time bonus payment provided in this section
8 applies to any retirant with at least twenty years of service as
9 a contributing member who currently receives an annual
10 retirement annuity of not more than seven thousand two
11 hundred dollars. This one-time bonus payment is subject to
12 any applicable limitations under section 415 of the Internal
13 Revenue Code of 1986, as amended.

14 (c) The one-time bonus payment provided by this section
15 shall be payable pro rata to any beneficiaries of a qualifying
16 retirant who currently receive an annuity or other benefit
17 payable by the retirement system.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2008

CHAPTER 1

**(S.B. 2011 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Education and the Arts - Office of the Secretary - Control Account - Lottery Education Fund, fund 3508, fiscal year 2009, organization 0431, to the Division of Culture and History - Lottery Education Fund, fund 3534, fiscal year 2009, organization 0432, and to the Library Commission - Lottery Education Fund, fund 3559, fiscal year 2009, organization 0433, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the

fiscal year two thousand eight, less regular appropriations; and further included the estimate of revenue for fiscal year two thousand nine, less regular appropriations; and

WHEREAS, It appears from the Governor’s Statement of Lottery Net Profits there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand nine; 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 nine, to fund 3508, fiscal
3 year 2009, organization 0431, be supplemented and amended
4 by increasing an existing item of appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 4. Appropriations from Lottery Net Profits.**

7 250–Department of Education and the Arts-
8 Office of the Secretary-
9 Control Account-
10 Lottery Education Fund

11 (WV Code Chapter 5F)

12 Fund 3508 FY 2009 Org 0431

13	14	Act-	Lottery
		ivity	Funds
15	1 Unclassified (R)	099	\$ 100,000

16 And that the total appropriation for the fiscal year ending
17 the thirtieth day of June, two thousand nine, to fund 3534,

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APPROPRIATIONS

2451

18 fiscal year 2009, organization 0432, be supplemented and
19 amended by increasing an existing item of appropriation as
20 follows:

21 TITLE II--APPROPRIATIONS.

22 **Sec. 4. Appropriations from Lottery Net Profits.**

23 *251--Division of Culture and History-*
24 *Lottery Education Fund*

25 (WV Code Chapter 29)

26 Fund 3534 FY 2009 Org 0432

27	28	Act-	Lottery
		ivity	Funds

29	4	Fairs and Festivals	122	\$ 112,000
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30 And that the total appropriation for the fiscal year ending
31 the thirtieth day of June, two thousand nine, to fund 3559,
32 fiscal year 2009, organization 0433, be supplemented and
33 amended to read as follows:

34 TITLE II--APPROPRIATIONS.

35 **Sec. 4. Appropriations from Lottery Net Profits.**

36 *252--Library Commission-*
37 *Lottery Education Fund*

38 (WV Code Chapter 10)

39 Fund 3559 FY 2009 Org 0433

2452

APPROPRIATIONS

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40			Act-	Lottery
41			ivity	Funds
42	1	Books and Films	179	\$ 450,000
43	2	Services to Libraries	180	550,000
44	3	Grants to Public Libraries	182	8,348,884
45	4	Digital Resources	309	219,992
46	5	Libraries - Special Projects (R) .	625	800,000
47	6	Infomine Network	884	<u>1,184,686</u>
48	7	Total		\$ 11,553,562
49				

50 Any unexpended balance remaining in the appropriation
 51 for Libraries - Special Projects (fund 3559, activity 625) at
 52 the close of the fiscal year two thousand eight is hereby
 53 reappropriated for expenditure during the fiscal year two
 54 thousand nine.

55 The purpose of this supplementary appropriation bill is to
 56 supplement, amend and increase items of appropriation in the
 57 aforesaid accounts for the designated spending units for
 58 expenditure during the fiscal year two thousand nine.



CHAPTER 2

**(S.B. 2012- By Senators Tomblin, Mr. President, and Caruth)
 [By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
 [Approved by the Governor on June 29, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund to the Division of Finance, fund 2208, fiscal year 2008,

organization 0209, to Joint Expenses, fund 1736, fiscal year 2008, organization 2300, to the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, and to the Division of Health - Central Office, fund 5129, fiscal year 2008, organization 0506, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenue for the fiscal year two thousand eight, less regular and surplus appropriations for the fiscal year two thousand eight; and

WHEREAS, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

1 That chapter twelve, Acts of the Legislature, regular
2 session, two thousand seven, known as the budget bill, be
3 supplemented and amended by adding to Title II, section five
4 thereof, the following:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 5. Appropriations from State Excess Lottery**
7 **Revenue Fund.**

8 *260a--Division of Finance*

9 Fund 2208 FY 2008 Org 0209

2454

APPROPRIATIONS

[Ch. 2

10

Act-

Lottery

11

ivity

Funds

12 1 Enterprise Resource Planning

13 System Planning Project (R) . ____ \$ 5,000,000

14 Any unexpended balance remaining in the appropriation
15 for Enterprise Resource Planning System Planning Project
16 (fund 2208, activity ____) at the close of the fiscal year two
17 thousand eight is hereby reappropriated for expenditure
18 during the fiscal year two thousand nine.

19 The above appropriation for Enterprise Resource
20 Planning System Planning Project, activity ____, shall be
21 expended upon consultation with the executive and
22 legislative branches.

23 And that the total appropriation for the fiscal year ending
24 the thirtieth day of June, two thousand eight, to fund 1736,
25 fiscal year 2008, organization 2300, be supplemented and
26 amended to read as follows:

27 *259—Joint Expenses*

28 (WV Code Chapter 4)

29 Fund 1736 FY 2008 Org 2300

30

Act-

Lottery

31

ivity

Funds

32 1 Enterprise Resource Planning

33 2 System Development

34 3 Reserve (R) ____ \$25,000,000

35

36 Any unexpended balance remaining in the appropriation
37 for Tax Reduction and Federal Funding Increased

38 Compliance (TRAFFIC)-Lottery Surplus(fund 1736, activity
39 929) at the close of the fiscal year two thousand seven is
40 hereby reappropriated for expenditure during the fiscal year
41 two thousand eight.

42 Any unexpended balance remaining in the appropriation
43 for Enterprise Resource Planning System Development
44 Reserve (fund 1736, activity ___) at the close of the fiscal
45 year two thousand eight is hereby reappropriated for
46 expenditure during the fiscal year two thousand nine.

47 And that the total appropriation for the fiscal year ending
48 the thirtieth day of June, two thousand eight, to fund 3170,
49 fiscal year 2008, organization 0307, be supplemented and
50 amended by increasing an existing item of appropriation and
51 adding a new item of appropriation as follows:

52 TITLE II--APPROPRIATIONS.

53 **Sec. 5. Appropriations from State Excess Lottery**
54 **Revenue Fund.**

55 *262--West Virginia Development Office*

56 (WV Code Chapter 5B)

57 Fund 3170 FY 2008 Org 0307

58 59		Act- ivity	Lottery Funds
60	1 Recreational Grants or Economic		
61	2 Development Loans (R)	253	\$ 3,000,000
62	3 Unclassified - Transfer	482	14,000,000

63 From the above appropriation for Unclassified - Transfer
64 (activity 482), \$5,000,000 shall be transferred to the
65 Broadband Deployment Fund (fund 3172) and \$9,000,000

66 shall be transferred to the Infrastructure Jobs and
67 Development Council.

68 And that the total appropriation for the fiscal year ending
69 the thirtieth day of June, two thousand eight, to fund 5219,
70 fiscal year 2008, organization 0506, be supplemented and
71 amended by adding a new item of appropriation as follows:

72 TITLE II--APPROPRIATIONS.

73 **Sec. 5. Appropriations from State Excess Lottery**
74 **Revenue Fund.**

75 *263--Division of Health-*
76 *Central Office*

77 (WV Code Chapter 16)

78 Fund 5219 FY 2008 Org 0506

79 80		Act- ivity	Lottery Funds
81	2 Early Intervention	223	\$ 2,491,646

82 The above appropriation for Early Intervention (fund
83 5219, activity 223) shall be transferred to the West Virginia
84 Birth-to-Three Fund (fund 5214).

85 The purpose of this supplemental appropriation bill is to
86 supplement, amend, add and increase items of appropriations
87 in the aforesaid accounts for the designated spending units
88 for expenditure during the fiscal year two thousand eight.

CHAPTER 3

**(S.B. 2013- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 29, 2008.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2008, organization 0508, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the ninth day of January, two thousand eight, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriations; and

WHEREAS, It appears from the Governor's Statement of Lottery Net Profits there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; 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 eight, to fund 5405, fiscal

3 year 2008, organization 0508, be supplemented and amended
4 by increasing an existing item of appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 4. Appropriations from Lottery Net Profits.**

7 *248--Bureau of Senior Services-*
8 *Lottery Senior Citizens Fund*

9 (WV Code Chapter 29)

10 Fund 5405 FY 2008 Org 0508

11	12	Act- ivity	Lottery Funds
13	23 In-Home Services and		
14	24 Nutrition for Senior		
15	25 Citizens (R)	917	\$ 1,000,000

16

17 Any unexpended balances remaining in the
18 appropriations for Silver Haired Legislature (fund 5405,
19 activity 202) and In-Home Services and Nutrition for Senior
20 Citizens (fund 5405, activity 917) at the close of fiscal year
21 two thousand eight are hereby reappropriated for expenditure
22 during the fiscal year two thousand nine.

23 The purpose of this supplementary appropriation bill is to
24 supplement, amend and increase an item of appropriation in
25 the aforesaid account for the designated spending unit for
26 expenditure during the fiscal year two thousand eight.

CHAPTER 4

**(S.B. 2014- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 26, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor's Office, fund 0101, fiscal year 2009, organization 0100, to the Department of Administration - West Virginia Retiree Health Benefit Trust Fund, fund 0611, fiscal year 2009, organization 0232, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2009, organization 0201, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, and to the Department of Education - State Department of Education, fund 0313, fiscal year 2009, organization 0402, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the twenty-fourth day of June, two thousand eight, setting forth therein the cash balance as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight, and an estimate

of revenues for the fiscal year two thousand nine, less regular appropriations; and

WHEREAS, It appears from the Governor’s statement of the State Fund - General Revenue there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand nine; 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 nine, to fund 0101, fiscal
3 year 2009, organization 0100, be supplemented and amended
4 by increasing an existing item of appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Section 1. Appropriations from General Revenue.**

7 **EXECUTIVE**

8 *5--Governor’s Office*

9 (WV Code Chapter 5)

10 Fund 0101 FY 2009 Org 0100

11				General
12			Act-	Revenue
13			ivity	Funds

14	5	Unclassified (R)	099	\$	30,000
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15 And that the total appropriation for the fiscal year ending
16 the thirtieth day of June, two thousand nine, to fund 0611,

17 fiscal year 2009, organization 0232, be supplemented and
18 amended to read as follows:

19 TITLE II--APPROPRIATIONS.

20 Section 1. Appropriations from General Revenue.

21 DEPARTMENT OF ADMINISTRATION

22 *30--West Virginia Retiree Health Benefit Trust Fund*

23 (WV Code Chapter 5)

24 Fund 0611 FY 2009 Org 0232

25				General
26			Act-	Lottery
27			ivity	Funds

28	1	Unclassified (R)			
29	2	Total - Transfer	402	\$	0

30 And that the total appropriation for the fiscal year ending
31 the thirtieth day of June, two thousand nine, to fund 0186,
32 fiscal year 2009, organization 0201, be supplemented and
33 amended to read as follows:

34 TITLE II--APPROPRIATIONS.

35 Section 1. Appropriations from General Revenue.

36 DEPARTMENT OF ADMINISTRATION

37 *18--Department of Administration-*
38 *Office of the Secretary*

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39

(WV Code Chapter 5F)

40

Fund 0186 FY 2009 Org 0201

41

General

42

Act-

Revenue

43

ivity

Funds

44	1	Personal Services	001	\$	479,703
45	2	Annual Increment	004		2,486
46	3	Employee Benefits	010		124,292
47	4	Teachers' Retirement Savings			
48	5	Realized	095		3,826,000
49	6	Unclassified	099		117,632
50	7	Other Post Employee			
51	8	Benefits - Transfer	289		30,730,000
52	9	State Employee Sick			
53	10	Leave Fund	378		5,000,000
54	11	Lease Rental Payments	516		16,000,000
55	12	Design-Build Board	540		19,068
56	13	Financial Advisor (R)	304		200,000
57	14	BRIM Premium	913		<u>10,071</u>
58	15	Total		\$	56,509,252

59 Any unexpended balance remaining in the appropriation
60 for Financial Advisor (fund 0186, activity 304) at the close
61 of the fiscal year two thousand eight is hereby reappropriated
62 for expenditure during the fiscal year two thousand nine.

63 The appropriation for Lease Rental Payments shall be
64 disbursed as provided by chapter thirty-one, article fifteen,
65 section six-b of the Code of West Virginia.

66 The above appropriation for Teachers' Retirement Savings
67 Realized (activity 095) shall be transferred to the Employee
68 Pension and Health Care Benefit Fund (fund 2044).

69 The above appropriation for State Employee Sick Leave
70 Fund (activity 378) shall be transferred to the State Employee
71 Sick Leave Fund (fund 2045, org 0201).

72 The above appropriation for Other Post Employee
73 Benefits - Transfer (activity 289) shall be transferred to the
74 Other Post-Employment Benefit Contribution Accumulation
75 Fund (fund 2541, org 0232).

76 The above funds appropriated and directed to be
77 transferred to the West Virginia Health Benefit Trust Fund -
78 Other Post-Employment Benefit Contribution Accumulation
79 Fund (fund 2541, org 0232) shall be treated by the trust as
80 elective payments (over and above the minimum annual
81 employer payment) made by respective employers in the
82 West Virginia Public Employees Insurance Agency identified
83 in the "PEIA Financial Plan" as "state fund risk pool"
84 employers, for General Revenue Fund-compensated public
85 employees. Such state fund risk pool employers shall be
86 credited by the trust on a pro rata basis for these amounts
87 paid on their behalf toward the annual required contribution
88 as addressed in section six, article sixteen-d, chapter five of
89 the Code of West Virginia.

90 From the above appropriation for Financial Advisor
91 (activity 304) amounts may be expended for financial
92 consulting services.

93 And that the total appropriation for the fiscal year ending
94 the thirtieth day of June, two thousand nine, to fund 0256,
95 fiscal year 2009, organization 0307, be supplemented and
96 amended by increasing an item of appropriation as follows:

97 TITLE II--APPROPRIATIONS.

98 **Section 1. Appropriations from General Revenue.**

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99 DEPARTMENT OF COMMERCE

100 35–West Virginia Development Office

101 (WV Code Chapter 5B)

102 Fund 0256 FY 2009 Org 0307

103					General
104					Revenue
105			Act-		Funds
			ivity		

106	7	Unclassified	099	\$	50,000
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107 The above appropriation for Unclassified (activity 099),
108 \$50,000 is for the Rt. 2 Highway Authority.

109 And that the total appropriation for the fiscal year ending
110 the thirtieth day of June, two thousand nine, to fund 0313,
111 fiscal year 2009, organization 0402, be supplemented and
112 amended by adding a new item and increasing an existing
113 item of appropriation as follows:

114 TITLE II--APPROPRIATIONS.

115 Section 1. Appropriations from General Revenue.

116 DEPARTMENT OF EDUCATION

117 45–State Department of Education

118 (WV Code Chapters 18 and 18A)

119 Fund 0313 FY 2009 Org 0402

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120				General
121		Act-		Revenue
122		ivity		Funds
123	22a HI-Y Youth in			
124	22b Government	616	\$	100,000
125	42 School Access Safety	978	\$	2,000,000

126 The above appropriation for School Access Safety (fund
127 0313, activity 978) shall be transferred to the School Access
128 Safety Fund (fund 3516).

129 The purpose of this supplemental appropriation bill is to
130 supplement, amend, decrease, increase and add items of
131 appropriations in the aforesaid accounts for the designated
132 spending units for expenditure during the fiscal year two
133 thousand nine.

CHAPTER 5

**(S.B. 2015- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

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 nine, to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2009, organization 0701, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2009, organization 0701, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand nine, 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 nine, to fund 7007, fiscal
3 year 2009, organization 0701, be supplemented and amended
4 to read as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 3. Appropriations from other funds.**

7 **DEPARTMENT OF REVENUE**

8 *200--Office of the Secretary-*
9 *State Debt Reduction Fund*

10 (WV Code Chapter 29)

11 Fund 7007 FY 2009 Org 0701

12			General
13		Act-	Revenue
14		ivity	Funds
15	1	Unclassified - Total - Transfer .	402 \$13,700,000

16 The above appropriation for Unclassified - Total - Transfer
17 shall be transferred to the Other Post-Employment Benefit
18 Contribution Accumulation Fund (fund 2541, org 0232).

19 The above funds appropriated and directed to be
20 transferred to the West Virginia Health Benefit Trust Fund -
21 Other Post-Employment Benefit Contribution Accumulation
22 Fund (fund 2541, org 0232) shall be treated by the trust as
23 elective payments (over and above the minimum annual
24 employer payment) made by respective employers in the
25 West Virginia Public Employees Insurance Agency identified
26 in the "PEIA Financial Plan" as "state fund risk pool"
27 employers, for General Revenue Fund-compensated public
28 employees. Such state fund risk pool employers shall be
29 credited by the trust on a pro rata basis for these amounts
30 paid on their behalf toward the annual required contribution
31 as addressed in section six, article sixteen-d, chapter five of
32 the Code of West Virginia.

33 The purpose of this supplementary appropriation bill is to
34 supplement and amend by adding language to an account in
35 the budget act for the fiscal year ending the thirtieth day of
36 June, two thousand nine, for expenditure during the fiscal
37 year two thousand nine.

CHAPTER 6

**(S.B. 2016- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2009, organization 0705, by supplementing and

amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand nine.

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 nine, to fund 7208, fiscal
3 year 2009, organization 0705, be supplemented and amended
4 to read as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 5. Appropriations from State Excess Lottery**
7 **Revenue Fund.**

8 *264--Lottery Commission-*
9 *Excess Lottery Revenue Fund Surplus*

10 Fund 7208 FY 2009 Org 0705

11	1	Capital Outlay-Parks	288	\$	0
12	2	Other Post Employee Benefits-			
13	3	Transfer	289	46,600,000	
14	4	Capitol Complex-Capital Outlay .	417	18,200,000	
15	5	Unclassified-Transfer	482	62,900,000	
16	6	School Access Safety	978	<u>8,000,000</u>	
17	7	Total		\$ 135,700,000	

18 The above appropriation for Unclassified-Transfer
19 (activity 482) shall be transferred to the General Revenue
20 Fund only after all funding required by chapter twenty-nine,
21 article twenty-two, section eighteen-a of the Code of West
22 Virginia has been satisfied as determined by the Director of
23 the Lottery.

24 The above appropriation for School Access Safety (fund
25 7208, activity 978) shall be transferred to the School Access
26 Safety Fund (fund 3516) only after all funding required by
27 chapter twenty-nine, article twenty-two, section eighteen-a of
28 the Code of West Virginia and the transfer to the General
29 Revenue Fund (fund 7208, org 0705, activity 482) has been
30 satisfied as determined by the Director of the Lottery.

31 The above appropriation for Capitol Complex-Capital
32 Outlay (fund 7208, activity 417) shall be transferred to the
33 Capitol Dome and Capital Improvements Fund (fund 2257)
34 only after all the appropriations for activities 482 and 978
35 have been satisfied.

36 The above appropriation for Other Post Employee
37 Benefits-Transfer (fund 7208, activity 289) shall be
38 transferred to the Other Post-Employment Benefit
39 Contribution Accumulation Fund (fund 2541, org 0232) only
40 after the above appropriations for activities 482, 978 and 417
41 have been satisfied.

42 The above funds appropriated and directed to be
43 transferred to the West Virginia Health Benefit Trust Fund -
44 Other Post-Employment Benefit Contribution Accumulation
45 Fund (fund 2541, org 0232) shall be treated by the Trust as
46 elective payments (over and above the minimum annual
47 employer payment) made by respective employers in the
48 West Virginia Public Employees Insurance Agency identified
49 in the "PEIA Financial Plan" as "state fund risk pool"
50 employers, for General Revenue Fund-compensated public
51 employees. Such state fund risk pool employers shall be
52 credited by the trust on a pro rata basis for these amounts
53 paid on their behalf toward the annual required contribution
54 as addressed in section six, article sixteen-d, chapter five of
55 the Code of West Virginia.

56 Should the actual revenues accruing to the total State
57 Excess Lottery Revenue Fund be insufficient to fully fund all
58 appropriations, the appropriation to the Other Post Employee
59 Benefits-Transfer (activity 289) shall be reduced to the extent
60 funds are available and the appropriation made in the reduced
61 amount and thereafter transferred to the Other Post-
62 Employment Benefit Contribution Accumulation Fund (fund
63 2541).

64 The purpose of this supplementary appropriation bill is to
65 supplement and amend by adding language to an item of
66 appropriation in the aforesaid account for the designated
67 spending unit. The funds are for expenditure during the
68 fiscal year two thousand nine with no new money being
69 appropriated.

CHAPTER 7

**(S.B. 2017- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]

[Approved by the Governor on June 29, 2008.]

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 eight, to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Revenue, Office of the

Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, 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 eight, to fund 7007, fiscal
3 year 2008, organization 0701, be supplemented and amended
4 to read as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 3. Appropriations from other funds.**

7 **DEPARTMENT OF REVENUE**

8 *196a--Office of the Secretary-*
9 *State Debt Reduction Fund*

10 (WV Code Chapter 29)

11 Fund 7007 FY 2008 Org 0701

		Act-	General
		ivity	Revenue
			Funds
15	1	Unclassified -	
16	2	Total - Transfer	402 \$ 5,800,000

17 The above appropriation for Unclassified - Total - Transfer
18 shall be transferred to the Other Post-Employment Benefit
19 Contribution Accumulation Fund (fund 2541, org 0232).

20 The above funds appropriated and directed to be
21 transferred to the West Virginia Health Benefit Trust Fund -

22 Other Post-Employment Benefit Contribution Accumulation
23 Fund (fund 2541, org 0232) shall be treated by the trust as
24 elective payments (over and above the minimum annual
25 employer payment) made by respective employers in the
26 West Virginia Public Employees Insurance Agency identified
27 in the “PEIA Financial Plan” as “state fund risk pool”
28 employers, for General Revenue Fund-compensated public
29 employees. Such state fund risk pool employers shall be
30 credited by the trust on a pro rata basis for these amounts
31 paid on their behalf toward the annual required contribution
32 as addressed in section six, article sixteen-d, chapter five of
33 the Code of West Virginia.

34 The purpose of this supplementary appropriation bill is to
35 supplement and amend by adding language to an account in
36 the budget act for the fiscal year ending the thirtieth day of
37 June, two thousand eight, for expenditure during the fiscal
38 year two thousand eight.

CHAPTER 8

**(S.B. 2018- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

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 nine, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 8741, fiscal year 2009, organization 0612, all supplementing and amending

the appropriation for the fiscal year ending the thirtieth day of June, two thousand nine.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand nine, 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 nine, to fund 8741, fiscal
3 year 2009, organization 0612, be supplemented and amended
4 by increasing the total appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 6. Appropriations of federal funds.**

7 **DEPARTMENT OF MILITARY AFFAIRS**
8 **AND PUBLIC SAFETY**

9 *311--West Virginia State Police*

10 (WV Code Chapter 15)

11 Fund 8741 FY 2009 Org 0612

12			General
13		Act-	Revenue
14		ivity	Funds

15	1	Unclassified - Total	096	\$45,000,000
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16 The purpose of this supplementary appropriation bill is to
17 supplement and increase an item of appropriation in the
18 aforesaid account for the designated spending unit for
19 expenditure during the fiscal year two thousand nine.

CHAPTER 9

**(S.B. 2019- By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed June 27, 2008; in effect from passage.]
[Approved by the Governor on June 30, 2008.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2008, organization 0205, to the Department of Administration - West Virginia Retiree Health Benefit Trust Fund, fund 0611, fiscal year 2008, organization 0232, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2008, organization 0310, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2008, organization 0431, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2008, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2008, organization 0511, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2008, organization 0702, and to the Higher Education Policy Commission - Administration - Control Account, fund

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10 (WV Code Chapter 5F)

11 Fund 0186 FY 2008 Org 0201.

12			General
13		Act-	Revenue
14		ivity	Funds

15	8a Debt Reduction (R)	635	\$23,972,984
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16 Any unexpended balance remaining in the appropriation
17 for Debt Reduction (fund 0186, activity 635) at the close of
18 the fiscal year two thousand eight is hereby reappropriated
19 for expenditure during the fiscal year two thousand nine.

20 And that the total appropriation for the fiscal year ending
21 the thirtieth day of June, two thousand eight, to fund 0195,
22 fiscal year 2008, organization 0205, be supplemented and
23 amended by adding a new item of appropriation as follows:

24 TITLE II--APPROPRIATIONS.

25 **Section 1. Appropriations from General Revenue.**

26 **DEPARTMENT OF ADMINISTRATION**

27 *19--Consolidated Public Retirement Board*

28 (WV Code Chapter 5)

29 Fund 0195 FY 2008 Org 0205.

30			General
31		Act-	Revenue
32		ivity	Funds

33	5 Consolidated Public		
34	6 Retirement - Transfer	918	\$ 25,000,000

35 The above appropriation for Consolidated Public
 36 Retirement - Transfer (fund 0195, activity 918) shall be
 37 transferred to the Consolidated Public Retirement Board -
 38 West Virginia Teachers Retirement System Employers
 39 Accumulation Fund (fund 2601).

40 The appropriation for Consolidated Public Retirement -
 41 Transfer (activity 918) shall be applied toward the state cost
 42 of the Teachers' Defined Contribution Retirement System
 43 plan participants selection to transfer to the Teachers
 44 Retirement System and any remaining amount of the
 45 appropriation in excess of that which may be required to
 46 compensate for the aforementioned shall go toward the
 47 general unfunded liability of the Teachers Retirement
 48 System.

49 And that the total appropriation for the fiscal year ending
 50 the thirtieth day of June, two thousand eight, to fund 0611,
 51 fiscal year 2008, organization 0232, be supplemented and
 52 amended to read as follows:

53 TITLE II--APPROPRIATIONS.

54 **Section 1. Appropriations from General Revenue.**

55 **DEPARTMENT OF ADMINISTRATION**

56 *31--West Virginia Retiree Health Benefit Trust Fund*

57 (WV Code Chapter 5)

58 Fund 0611 FY 2008 Org 0232

59	60	61	Act- ivity	General Revenue Funds
62	1	Unclassified		
63	2	Total - Transfer	402	\$39,674,000

64 The above appropriation for Unclassified - Total -
65 Transfer (fund 0611, activity 402) shall be transferred to the
66 Other Post-Employment Benefit Contribution Accumulation
67 Fund (fund 2541, org 0232).

68 The above funds appropriated and directed to be
69 transferred to the West Virginia Health Benefit Trust Fund -
70 Other Post-Employment Benefit Contribution Accumulation
71 Fund (fund 2541, org 0232) shall be treated by the trust as
72 elective payments (over and above the minimum annual
73 employer payment) made by respective employers in the
74 West Virginia Public Employees Insurance Agency that are
75 identified in the "PEIA Financial Plan" as "state fund risk
76 pool" employers, for General Revenue Fund-compensated
77 public employees. Such state fund risk pool employers shall
78 be credited by the trust on a pro rata basis for these amounts
79 paid on their behalf toward the annual required contribution
80 as addressed in section six, article sixteen-d, chapter five of
81 the Code of West Virginia.

82 And that the total appropriation for the fiscal year ending
83 the thirtieth day of June, two thousand eight, to fund 0256,
84 fiscal year 2008, organization 0307, be supplemented and
85 amended by adding a new item of appropriation and
86 increasing an existing item of appropriation as follows:

87 TITLE II--APPROPRIATIONS.

88 **Section 1. Appropriations from General Revenue.**

89 **DEPARTMENT OF COMMERCE**

90 *36--West Virginia Development Office*

91 (WV Code Chapter 5B)

92 Fund 0256 FY 2008 Org 0307

118 Any unexpended balance remaining in the
 119 appropriation for Land Purchase (fund 0265, activity 761)
 120 at the close of the fiscal year two thousand eight is hereby
 121 reappropriated for expenditure during the fiscal year two
 122 thousand nine.

123 The above appropriation for Land Purchase (activity 761)
 124 is authorized for expenditure: *Provided*, That by the first day
 125 of January, two thousand nine, a certified appraisal is
 126 completed and a letter of intent to purchase the land has been
 127 issued, as certified by the Secretary of the Department of
 128 Commerce.

129 And that the total appropriation for the fiscal year ending
 130 the thirtieth day of June, two thousand eight, to fund 0313,
 131 fiscal year 2008, organization 0402, be supplemented and
 132 amended by adding new items of appropriation as follows:

133 TITLE II--APPROPRIATIONS.

134 **Section 1. Appropriations from General Revenue.**

135 **DEPARTMENT OF EDUCATION**

136 *46--State Department of Education*

137 (WV Code Chapters 18 and 18A)

138 Fund 0313 FY 2008 Org 0402

139		Act-	General
140		ivity	Revenue
141			Funds
142	7a Transportation	154	\$ 5,000,000
143	11a Tax Assessment Errors	353	\$ 100,282

144 And that the total appropriation for the fiscal year ending
145 the thirtieth day of June, two thousand eight, to fund 0294,
146 fiscal year 2008, organization 0431, be supplemented and
147 amended by adding a new item of appropriation as follows:

148 TITLE II--APPROPRIATIONS.

149 **Section 1. Appropriations from General Revenue.**

150 **DEPARTMENT OF EDUCATION AND THE ARTS**

151 *52-Office of the Secretary*

152 (WV Code Chapter 5F)

153 Fund 0294 FY 2008 Org 0431

154				General
155				Revenue
156			Act-	Funds
			ivity	

157	4a	Digital Conversion (R)	247	\$	800,000
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158 Any unexpended balance remaining in the appropriation
159 for Digital Conversion (fund 0294, activity 247) at the close
160 of the fiscal year two thousand eight is hereby reappropriated
161 for expenditure during the fiscal year two thousand nine.

162 And that the total appropriation for the fiscal year ending
163 the thirtieth day of June, two thousand eight, to fund 0273,
164 fiscal year 2008, organization 0313, be supplemented and
165 amended to read as follows:

166 TITLE II--APPROPRIATIONS.

167 **Section 1. Appropriations from General Revenue.**

168 **DEPARTMENT OF ENVIRONMENTAL**
169 **PROTECTION**

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APPROPRIATIONS

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170

58-Division of Environmental Protection

171

(WV Code Chapter 22)

172

Fund 0273 FY 2008 Org 0313.

173

174

175

**Act-
ivity**

**General
Revenue
Funds**

176	1	Personal Services	001	\$ 3,574,292
177	2	Annual Increment	004	57,846
178	3	Employee Benefits	010	1,222,702
179	4	Unclassified	099	844,613
180	5	Dam Safety	607	207,105
181	6	West Virginia Stream Partners		
182	7	Program	637	77,396
183	8	WV Contribution to River		
184	9	Commissions	776	148,485
185	10	Efficiency Savings	799	0
186	11	Office of Water Resources		
187	12	Nonenforcement Activity . .	855	1,141,267
188	13	BRIM Premium	913	56,802
189	14	Welch DEP Office Continuing		
190	15	Operation	993	<u>79,115</u>
191	16	Total		\$ 7,409,623

192 From the above appropriations (fund 0273, organization
 193 0313) an amount not to exceed \$350,000 may be transferred
 194 to the Dam Safety Rehabilitation Revolving Fund (fund
 195 3025).

196 And that the total appropriation for the fiscal year ending
 197 the thirtieth day of June, two thousand eight, to fund 0407,
 198 fiscal year 2008, organization 0506, be supplemented and
 199 amended by increasing an existing item of appropriation as
 200 follows:

201 TITLE II--APPROPRIATIONS.

202 **Section 1. Appropriations from General Revenue.**

203 **DEPARTMENT OF HEALTH AND HUMAN**
204 **RESOURCES**

205 *61--Division of Health-*
206 *Central Office*

207 (WV Code Chapter 16)

208 Fund 0407 FY 2008 Org 0506

209			General
210		Act-	Revenue
211		ivity	Funds

212	27	Maternal and Child Health		
213	28	Clinics, Clinicians and Medical		
214	29	Contracts and Fees (R)	575	\$ 1,008,354

215 Any unexpended balances remaining in the
216 appropriations for Emergency Response Entities - Special
217 Projects (fund 0407, activity 822) and Antiviral Vaccine
218 Purchases (fund 0407, activity 955) at the close of the fiscal
219 year two thousand eight are hereby reappropriated for
220 expenditure during the fiscal year two thousand nine.

221 And that the total appropriation for the fiscal year ending
222 the thirtieth day of June, two thousand eight, to fund 0403,
223 fiscal year 2008, organization 0511, be supplemented and
224 amended by increasing an existing item of appropriation as
225 follows:

226 TITLE II--APPROPRIATIONS.

227 **Section 1. Appropriations from General Revenue.**

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228 **DEPARTMENT OF HEALTH AND HUMAN**
229 **RESOURCES**

230 *65--Division of Human Services*

231 (WV Code Chapters 9, 48 and 49)

232 Fund 0403 FY 2008 Org 0511

233					
234			Act-		General
235			ivity		Revenue
					Funds

236	31	Grants for Licensed Domestic			
237	32	Violence Programs and			
238	33	Statewide Prevention (R) . . .	750	\$	1,000,000

239 Any unexpended balance remaining in the appropriation
240 for Grants for Licensed Domestic Violence Programs and
241 Statewide Prevention (fund 0403, activity 750) at the close of
242 the fiscal year two thousand eight is hereby reappropriated
243 for expenditure during the fiscal year two thousand nine.

244 And that the total appropriation for the fiscal year ending
245 the thirtieth day of June, two thousand eight, to fund 0470,
246 fiscal year 2008, organization 0702, be supplemented and
247 amended by increasing an existing item of appropriation and
248 adding a new item of appropriation as follows:

249 TITLE II--APPROPRIATIONS.

250 **Section 1. Appropriations from General Revenue.**

251 **DEPARTMENT OF REVENUE**

252 *81--Tax Division*

253 (WV Code Chapter 11)

255 Fund 0470 FY 2008 Org 0702

256				General
257			Act-	Revenue
258			ivity	Funds

259	4	Unclassified (R)	099	\$ 1,300,000
260	4a	Unclassified - Transfer	482	40,000,000

261 The above appropriation for Unclassified - Transfer (fund
262 0470, activity 482) shall be transferred to the Motor Fuel
263 Excise Tax Shortfall Reserve Fund.

264 And that the total appropriation for the fiscal year ending
265 the thirtieth day of June, two thousand eight, to fund 0589,
266 fiscal year 2008, organization 0441, be supplemented and
267 amended by increasing an existing item of appropriation as
268 follows:

269 TITLE II--APPROPRIATIONS.

270 **Section 1. Appropriations from General Revenue.**

271 **HIGHER EDUCATION**

272 *90--Higher Education Policy Commission-*
273 *Administration-*
274 *Control Account*

275 (WV Code Chapter 18B)

276 Fund 0589 FY 2008 Org 0441

277				General
278			Act-	Revenue
279			ivity	Funds

280	6	PROMISE Scholarship -		
281	7	Transfer	800	\$ 1,445,000

281 The purpose of this supplemental appropriation bill is to
282 supplement, amend, increase and add items of appropriations
283 in the aforesaid accounts for the designated spending units
284 for expenditure during the fiscal year two thousand eight.

CHAPTER 10

(H.B. 213- By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]

[Passed June 26, 2008; in effect ninety days from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §19-23-10 of the Code of West Virginia, 1931, as amended, relating to greyhound racing generally; limiting participation in the West Virginia Greyhound Breeding Development Fund to accredited West Virginia whelped greyhounds wholly or solely owned by bona fide residents of West Virginia; relating to greyhound training tracks constructed with monies from the West Virginia Greyhound Breeding Development Fund; providing for allocation and distribution of not more than two million dollars from the balance of the purse supplemental fund for the construction and maintenance of two greyhound training tracks and facilities subject to the approval of the Racing Commission; prohibiting the Racing Commission from requiring association membership as a prerequisite to participation in the West Virginia Greyhound Breeding Development Fund; requiring up to three races featuring accredited West Virginia whelped greyhounds per race card; requiring the Greyhound Owners and Breeders Association to submit additions or deletions to the accredited West Virginia whelped greyhounds registry; and requiring the Racing Commission to promulgate rules providing a process for

competitive bidding of the construction and/or maintenance of the training tracks and setting standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

Be it enacted by the Legislature of West Virginia:

That §19-23-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

1 (a) Any racing association conducting thoroughbred
2 racing at any horse racetrack in this state shall pay each day
3 upon which horse races are run a daily license tax of two
4 hundred fifty dollars. Any racing association conducting
5 harness racing at any horse racetrack in this state shall pay
6 each day upon which horse races are run a daily license tax
7 of one hundred fifty dollars. Any racing association
8 conducting dog races shall pay each day upon which dog
9 races are run a daily license tax of one hundred fifty dollars.
10 In the event thoroughbred racing, harness racing, dog racing,
11 or any combination of the foregoing are conducted on the
12 same day at the same racetrack by the same racing
13 association, only one daily license tax in the amount of two
14 hundred fifty dollars shall be paid for that day. Any daily
15 license tax shall not apply to any local, county or state fair,
16 horse show or agricultural or livestock exposition at which
17 horse racing is conducted for not more than six days.

18 (b) Any racing association licensed by the Racing
19 Commission to conduct thoroughbred racing and permitting
20 and conducting pari-mutuel wagering under the provisions of
21 this article shall, in addition to the daily license tax set forth
22 in subsection (a) of this section, pay to the Racing

23 Commission, from the commission deducted each day by the
24 licensee from the pari-mutuel pools on thoroughbred racing
25 a tax calculated on the total daily contribution of all pari-
26 mutuel pools conducted or made at any and every
27 thoroughbred race meeting of the licensee licensed under the
28 provisions of this article. The tax, on the pari-mutuel pools
29 conducted or made each day during the months of January,
30 February, March, October, November and December, shall
31 be calculated at four tenths of one percent of the pool; and,
32 on the pari-mutuel pools conducted or made each day during
33 all other months, shall be calculated at one and four-tenths
34 percent of the pool: *Provided*, That out of the amount
35 realized from the three tenths of one percent decrease in the
36 tax effective for fiscal year one thousand nine hundred
37 ninety-one and thereafter, which decrease correspondingly
38 increases the amount of commission retained by the licensee,
39 the licensee shall annually expend or dedicate: (i) One half
40 of the realized amount for capital improvements in its barn
41 area at the track, subject to the Racing Commission's prior
42 approval of the plans for the improvements; and (ii) the
43 remaining one half of the realized amount for capital
44 improvements as the licensee may determine appropriate at
45 the track. The term "capital improvement" shall be as
46 defined by the Internal Revenue Code: *Provided, however*,
47 That any racing association operating a horse racetrack in this
48 state having an average daily pari-mutuel pool on horse
49 racing of two hundred eighty thousand dollars or less per day
50 for the race meetings of the preceding calendar year shall, in
51 lieu of payment of the pari-mutuel pool tax, calculated as in
52 this subsection, be permitted to conduct pari-mutuel wagering
53 at the horse racetrack on the basis of a daily pari-mutuel pool
54 tax fixed as follows: On the daily pari-mutuel pool not
55 exceeding three hundred thousand dollars the daily pari-
56 mutuel pool tax shall be one thousand dollars plus the
57 otherwise applicable percentage rate imposed by this
58 subsection of the daily pari-mutuel pool, if any, in excess of
59 three hundred thousand dollars: *Provided further*, That upon
60 the effective date of the reduction of the daily pari-mutuel

61 pool tax to one thousand dollars from the former two
62 thousand dollars, the association or licensee shall daily
63 deposit five hundred dollars into the special fund for regular
64 purses established by subdivision (1), subsection (b), section
65 nine of this article: *And provided further*, That if an
66 association or licensee qualifying for the foregoing alternate
67 tax conducts more than one racing performance, each
68 consisting of up to thirteen races in a calendar day, the
69 association or licensee shall pay both the daily license tax
70 imposed in subsection (a) of this section and the alternate tax
71 in this subsection for each performance: *And provided*
72 *further*, That a licensee qualifying for the foregoing alternate
73 tax is excluded from participation in the fund established by
74 section thirteen-b of this article: *And provided further*, That
75 this exclusion shall not apply to any thoroughbred racetrack
76 at which the licensee has participated in the West Virginia
77 thoroughbred development fund for more than four
78 consecutive years prior to the thirty-first day of December,
79 one thousand nine hundred ninety-two.

80 (c) Any racing association licensed by the Racing
81 Commission to conduct harness racing and permitting and
82 conducting pari-mutuel wagering under the provisions of this
83 article shall, in addition to the daily license tax required under
84 subsection (a) of this section, pay to the Racing Commission,
85 from the commission deducted each day by the licensee from
86 the pari-mutuel pools on harness racing, as a tax, three percent
87 of the first one hundred thousand dollars wagered, or any part
88 thereof; four percent of the next one hundred fifty thousand
89 dollars; and five and three-fourths percent of all over that
90 amount wagered each day in all pari-mutuel pools conducted or
91 made at any and every harness race meeting of the licensee
92 licensed under the provisions of this article.

93 (d) Any racing association licensed by the Racing
94 Commission to conduct dog racing and permitting and
95 conducting pari-mutuel wagering under the provisions of this
96 article shall, in addition to the daily license tax required

97 under subsection (a) of this section, pay to the Racing
98 Commission, from the commission deducted each day by the
99 licensee from the pari-mutuel pools on dog racing, as a tax,
100 four percent of the first fifty thousand dollars or any part
101 thereof of the pari-mutuel pools, five percent of the next fifty
102 thousand dollars of the pari-mutuel pools, six percent of the
103 next one hundred thousand dollars of the pari-mutuel pools,
104 seven percent of the next one hundred fifty thousand dollars
105 of the pari-mutuel pools, and eight percent of all over three
106 hundred fifty thousand dollars wagered each day: *Provided*,
107 That the licensee shall deduct daily from the pari-mutuel tax
108 an amount equal to one tenth of one percent of the daily pari-
109 mutuel pools in dog racing in fiscal year one thousand nine
110 hundred ninety; fifteen hundredths of one percent in fiscal
111 year one thousand nine hundred ninety-one; two tenths of one
112 percent in fiscal year one thousand nine hundred ninety-two;
113 one quarter of one percent in fiscal year one thousand nine
114 hundred ninety-three; and three tenths of one percent in fiscal
115 year one thousand nine hundred ninety-four and every fiscal
116 year thereafter. The amounts deducted shall be paid to the
117 Racing Commission to be deposited by the Racing
118 Commission in a banking institution of its choice in a special
119 account to be known as "West Virginia Racing Commission-
120 Special Account-West Virginia Greyhound Breeding
121 Development Fund". The purpose of the fund is to promote
122 better breeding, training track facilities and racing of
123 greyhounds in the state through awards and purses to bona
124 fide resident registered greyhound owners of accredited West
125 Virginia whelped greyhounds. In order to participate and be
126 eligible to receive an award or purse through the fund, the
127 registered greyhound owner must have an appropriate license
128 from the Racing Commission to race in West Virginia. The
129 registered greyhound dam at the time of breeding must be
130 wholly or solely owned or leased by a bona fide resident or
131 residents of West Virginia. The accredited West Virginia
132 whelped greyhound must be wholly or solely owned by a
133 bona fide resident or residents of this state. To qualify as a
134 bona fide resident of West Virginia, a registered greyhound

135 owner may not claim residency in any other state. A
136 registered greyhound owner must prove bona fide residency
137 by providing to the commission personal income tax returns
138 filed in the State of West Virginia for the most recent tax year
139 and the three previous tax years, has real or personal property
140 in this state on which the owner has paid real or personal
141 property taxes during the most recent tax year and the
142 previous three tax years and an affidavit stating that the
143 owner claims no other state of residency. The Racing
144 Commission shall maintain a registry for West Virginia bred
145 greyhounds. The moneys shall be expended by the Racing
146 Commission for purses for stake races, training track
147 facilities, supplemental purse awards, administration,
148 promotion and educational programs involving West Virginia
149 whelped dogs, owned by residents of this state under rules
150 promulgated by the Racing Commission. The Racing
151 Commission shall pay out of the greyhound breeding
152 development fund to each of the licensed dog racing tracks
153 the sum of seventy-five thousand dollars for the fiscal year
154 ending the thirtieth day of June, one thousand nine hundred
155 ninety-four. The licensee shall deposit the sum into the
156 special fund for regular purses established under the
157 provisions of section nine of this article. The funds shall be
158 expended solely for the purpose of supplementing regular
159 purses under rules promulgated by the Racing Commission.

160 Supplemental purse awards will be distributed as follows:
161 Supplemental purses shall be paid directly to the registered
162 greyhound owner of an accredited greyhound.

163 The registered greyhound owner of accredited West
164 Virginia whelped greyhounds that earn points at any West
165 Virginia meet will receive a bonus award calculated at the
166 end of each month as a percentage of the fund dedicated to
167 the owners as purse supplements, which shall be a minimum
168 of fifty percent of the total moneys deposited into the West
169 Virginia Greyhound Breeding Development fund monthly.

170 The total amount of the fund available for the owners'
171 awards shall be distributed according to the ratio of points
172 earned by an accredited greyhound to the total amount earned
173 in races by all accredited West Virginia whelped greyhounds
174 for that month as a percentage of the funds dedicated to the
175 owners' purse supplements. The point value at all greyhound
176 tracks shall be the same as approved by the Racing
177 Commission to be effective April 1, 2007. The West Virginia
178 Greyhound Owners and Breeders Association shall submit a
179 list of any additions or deletions to the registry of accredited
180 West Virginia whelped greyhounds on the first of each
181 month. The Racing Commission shall not require anyone to
182 be a member of a particular association in order to participate
183 in the West Virginia Greyhound Breeding Development
184 Fund.

185 The registered greyhound owner of an accredited West
186 Virginia whelped greyhound shall file a purse distribution
187 form with the Racing Commission for a percentage of his or
188 her dog's earnings to be paid directly to the registered
189 greyhound owner or owners of the greyhound. Distribution
190 shall be made on the fifteenth day of each month for the
191 preceding month's achievements.

192 In no event shall points earned at a meet held at a track
193 which did not make contributions to the West Virginia
194 Greyhound Breeding Development Fund out of the daily pool
195 on the day the meet was held qualify or count toward
196 eligibility for supplemental purse awards.

197 Any balance in the purse supplement funds after all
198 distributions have been made for the year revert to the
199 general account of the fund for distribution in the following
200 year: *Provided*, That not more than two million dollars from
201 the balance in the purse supplemental fund shall be used for
202 the construction and maintenance of two dog training track
203 facilities if such be approved by the Racing Commission:
204 *Provided, however*, That not more than one million dollars

205 may be allocated for the construction and maintenance of
206 each training track: *Provided further*, That both training track
207 facilities must be located in West Virginia. The West
208 Virginia Racing Commission shall be authorized to
209 promulgate rules governing dog training tracks: *And provided*
210 *further*, That the Racing Commission shall (1) provide a
211 process in its rules for competitive bidding of the
212 construction or maintenance, or both, of the training tracks,
213 and (2) set standards to assure that only the actual costs of
214 construction and maintenance shall be paid out of the
215 foregoing fund.

216 In an effort to further promote the breeding of quality
217 West Virginia whelped greyhounds, a bonus purse
218 supplement shall be established in the amount of fifty
219 thousand dollars per annum, to be paid in equal quarterly
220 installments of twelve thousand five hundred dollars per
221 quarter using the same method to calculate and distribute
222 these funds as the regular supplemental purse awards. This
223 bonus purse supplement is for three years only, commencing
224 on the first day of July, one thousand nine hundred ninety-
225 three, and ending the thirtieth day of June, one thousand nine
226 hundred ninety-six. This money would come from the current
227 existing balance in the greyhound development fund.

228 Each pari-mutuel greyhound track shall provide stakes
229 races for accredited West Virginia whelped greyhounds:
230 *Provided*, That each pari-mutuel track shall have one juvenile
231 and one open stake race annually. Each pari-mutuel dog
232 track shall provide at least three restricted races for
233 accredited West Virginia whelped greyhounds per race card:
234 *Provided, however*, That sufficient dogs are available. To
235 assure breeders of accredited West Virginia whelped
236 greyhounds an opportunity to participate in the West Virginia
237 Greyhound Breeding Development Fund the West Virginia
238 Racing Commission by the first day of July each year shall
239 establish and announce the minimum number of accredited
240 West Virginia whelped greyhounds that greyhound racing

241 kennels at West Virginia dog tracks must have on their racing
242 active list during the calendar year following such action.
243 The minimum number may vary from dog track to dog track.
244 The minimum number shall be established after consultation
245 with the West Virginia Greyhound Owners and Breeders
246 Association and kennel owners and operators. Factors to be
247 considered in establishing this minimum number shall be the
248 number of individually registered accredited West Virginia
249 whelped greyhounds whelped in the previous two years. The
250 number of all greyhounds seeking qualification at each West
251 Virginia dog track, the ratio of active running greyhounds to
252 housed number of greyhounds at each West Virginia dog
253 track, and the size and number of racing kennels at each West
254 Virginia dog track. Any greyhound racing kennel not having
255 the minimum number of accredited West Virginia whelped
256 greyhounds determined by the West Virginia Racing
257 Commission on their active list shall only be permitted to
258 race the maximum allowable number on the active list less
259 the number of accredited West Virginia whelped greyhounds
260 below the established minimum number. Consistent
261 violations of this minimum requirement may be reviewed by
262 the Racing Commission and may constitute cause for denial
263 or revocation of a kennel's racing license. The Racing
264 Commission shall oversee and approve racing schedules and
265 purse amounts.

266 Ten percent of the deposits into the greyhound breeding
267 development fund beginning the first day of July, one
268 thousand nine hundred ninety-three and continuing each year
269 thereafter, shall be withheld by the Racing Commission and
270 placed in a special revenue account hereby created in the
271 State Treasury called the "administration, promotion and
272 educational and capital improvement account". The Racing
273 Commission is authorized to expend the moneys deposited in
274 the administration, promotion and educational and capital
275 improvement account at such times and in such amounts as
276 the commission determines to be necessary for purposes of
277 administering and promoting the greyhound development

278 program: *Provided*, That beginning with fiscal year one
279 thousand nine hundred ninety-five and in each fiscal year
280 thereafter in which the commission anticipates spending any
281 money from the account, the commission shall submit to the
282 executive department during the budget preparation period
283 prior to the Legislature convening before that fiscal year for
284 inclusion in the executive budget document and budget bill,
285 the recommended expenditures, as well as requests of
286 appropriations for the purpose of administration, promotion
287 and education. The commission shall make an annual report
288 to the Legislature on the status of the administration,
289 promotion and education account, including the previous
290 year's expenditures and projected expenditures for the next
291 year.

292 The Racing Commission, for the fiscal year one thousand
293 nine hundred ninety-four only, may expend up to thirty-five
294 thousand dollars from the West Virginia greyhound breeding
295 development fund to accomplish the purposes of this section
296 without strictly following the requirements in the previous
297 paragraph.

298 (e) All daily license and pari-mutuel pools tax payments
299 required under the provisions of this section shall be made to
300 the Racing Commission or its agent after the last race of each
301 day of each horse or dog race meeting, and the pari-mutuel
302 pools tax payments shall be made from all contributions to all
303 pari-mutuel pools to each and every race of the day.

304 (f) Every association or licensee subject to the provisions
305 of this article, including the changed provisions of sections
306 nine and ten of this article, shall annually submit to the
307 Racing Commission and the Legislature financial statements,
308 including a balance sheet, income statement, statement of
309 change in financial position and an audit of any electronic
310 data system used for pari-mutuel tickets and betting, prepared
311 in accordance with generally accepted auditing standards, as
312 certified by an experienced public accountant or a certified
313 public accountant.

CHAPTER 11

**(H.B. 217- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect ninety days from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §18A-4-7c of the Code of West Virginia, 1931, as amended, relating to requiring county boards filling summer school program positions to give employment preference to professional educators who are regularly employed on a full-time basis.

Be it enacted by the Legislature of West Virginia:

That §18A-4-7c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7c. Summer employment of professional educators.

1 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 regularly employed by the
6 county board on a full-time basis shall be given employment
7 preference over applicants who are not regularly employed
8 by the county board on a full-time basis.

CHAPTER 12

**(H.B. 212- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 26, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to competency and recertification testing for service personnel; and establishing a recertification testing schedule for school bus operators.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

1 (a) The State Board of Education shall develop and make
2 available competency tests for all of the classification titles
3 defined in section eight of this article and listed in section
4 eight-a of this article for service personnel. Each
5 classification title defined and listed is considered a separate
6 classification category of employment for service personnel
7 and has a separate competency test, except for those class
8 titles having Roman numeral designations, which are
9 considered a single classification of employment and have a
10 single competency test.

11 (1) The cafeteria manager class title is included in the
12 same classification category as cooks and has the same
13 competency test.

14 (2) The executive secretary class title is included in the
15 same classification category as secretaries and has the same
16 competency test.

17 (3) The classification titles of chief mechanic, mechanic
18 and assistant mechanic are included in one classification title
19 and have the same competency test.

20 (b) The purpose of these tests is to provide county boards
21 a uniform means of determining whether school service
22 personnel who do not hold a classification title in a particular
23 category of employment meet the definition of the
24 classification title in another category of employment as
25 defined in section eight of this article. Competency tests may
26 not be used to evaluate employees who hold the classification
27 title in the category of their employment.

28 (c) The competency test consists of an objective written
29 or performance test, or both. Applicants may take the written
30 test orally if requested. Oral tests are recorded mechanically
31 and kept on file. The oral test is administered by persons
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and
34 categories other than bus operator is administered by an
35 employee of the county board or an employee of a
36 multicounty vocational school that serves the county at a
37 location designated by the superintendent and approved by
38 the board. The location may be a vocational school that
39 serves the county.

40 (2) A standard passing score is established by the State
41 Department of Education for each test and is used by county
42 boards.

43 (3) The subject matter of each competency test is
44 commensurate with the requirements of the definitions of the
45 classification titles as provided in section eight of this article.
46 The subject matter of each competency test is designed in
47 such a manner that achieving a passing grade does not require
48 knowledge and skill in excess of the requirements of the
49 definitions of the classification titles. Achieving a passing
50 score conclusively demonstrates the qualification of an
51 applicant for a classification title.

52 (4) Once an employee passes the competency test of a
53 classification title, the applicant is fully qualified to fill
54 vacancies in that classification category of employment as
55 provided in section eight-b of this article and may not be
56 required to take the competency test again.

57 (d) An applicant who fails to achieve a passing score is
58 given other opportunities to pass the competency test when
59 making application for another vacancy within the
60 classification category.

61 (e) Competency tests are administered to applicants in a
62 uniform manner under uniform testing conditions. County
63 boards are responsible for scheduling competency tests,
64 notifying applicants of the date and time of the one day of
65 training prior to taking the test, and the date and time of the
66 test. County boards may not use a competency test other than
67 the test authorized by this section.

68 (f) When scheduling of the competency test conflicts with
69 the work schedule of a school employee who has applied for
70 a vacancy, the employee is excused from work to take the
71 competency test without loss of pay.

72 (g) A minimum of one day of appropriate in-service
73 training is provided to employees to assist them in preparing
74 to take the competency tests.

75 (h) Competency tests are used to determine the
76 qualification of new applicants seeking initial employment in
77 a particular classification title as either a regular or substitute
78 employee.

79 (i) Notwithstanding any provisions in this code to the
80 contrary, once an employee holds or has held a classification
81 title in a category of employment, that employee is
82 considered qualified for the classification title even though
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the
85 definitions of class titles as provided in section eight of this
86 article or the procedure and requirements of section eight-b
87 of this article.

88 (k) Notwithstanding any other provision of this code to
89 the contrary, the recertification test for a bus operator is
90 administered as follows:

91 (1) For a bus operator with regular employee status and
92 continuing contract status who has been employed less than
93 five consecutive years, the test is administered biennially and
94 may not be administered more frequently;

95 (2) For a bus operator with regular employee status and
96 continuing contract status who has been employed at least
97 five consecutive years, the test is administered every third
98 year and may not be administered more frequently; and

99 (3) For a substitute bus operator or for a bus operator
100 with regular employee status, but on a probationary contract,
101 the test is administered annually.

CHAPTER 13

**(H.B. 219- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 28, 2008; in effect ninety days from passage.]
[Approved by the Governor on July 14, 2008.]

AN ACT to amend and reenact §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-9-14 of said code, all relating to the regulation and control of elections, generally; legislative findings related to the particular characteristics of West Virginia which warrant regulation of non-broadcast media; defining terms; clarifying that statutory prohibitions and criminal provisions relating to corporate election communications apply only to express advocacy; clarifying offenses and penalties; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-9-14 of said code be amended and reenacted, all to read as follows:

Article

- 8. Regulation and Control of Elections.**
- 9. Offenses and Penalties.**

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

- §3-8-1. Provisions to regulate and control elections.
- §3-8-1a. Definitions.
- §3-8-4. Treasurers and financial agents; written designation requirements.
- §3-8-5. Detailed accounts and verified financial statements required.
- §3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

§3-8-1. Provisions to regulate and control elections.

1 (a) The Legislature finds that:

2 (1) West Virginia's population is 1,808,344, ranking 37th
3 among the fifty states.

4 (2) State Senate districts have a population of
5 approximately one hundred six thousand three hundred
6 seventy-three, and the average Delegate district has a
7 population of approximately thirty-one thousand, one
8 hundred seventy-eight. The size of these districts is
9 substantially smaller than the United States Senatorial and
10 Congressional Districts.

11 (3) When the relatively small size of the State's
12 legislative and other voting districts is combined with the
13 economics and typical uses of various forms of electioneering
14 communication, history shows that non-broadcast media is
15 and will continue to be a widely used means of making
16 campaign related communications to target relevant
17 audiences. Consequently, non-broadcast communications are
18 prevalent during elections.

19 (4) Disclosure provisions are appropriate legislative
20 weapons against the reality or appearance of improper
21 influence stemming from the dependence of candidates on
22 large campaign contributions, and the ceilings imposed
23 accordingly serve the basic governmental interest in
24 safeguarding the integrity of the electoral process without
25 directly impinging upon the rights of individual citizens and
26 candidates to engage in political debate and discussion.

27 (5) Disclosure of expenditures serve a substantial
28 governmental interest in informing the electorate and
29 preventing the corruption of the political process.

30 (6) Disclosure by persons and entities that make
31 expenditures for communications that expressly advocate the
32 election or defeat of clearly identified candidates, or perform
33 its functional equivalent, is a reasonable and minimally
34 restrictive method of furthering First Amendment values by
35 public exposure of the state election system.

36 (7) Failing to regulate non-broadcast media messages
37 would permit those desiring to influence elections to avoid
38 the principles and policies that are embodied in existing state
39 law.

40 (8) The regulation of the various types of non-broadcast
41 media embodied within the amendments enacted during the
42 second extraordinary session of two thousand eight, in
43 addition to broadcast media, is tailored to meet the
44 circumstances found in the State of West Virginia.

45 (9) Non-broadcast media such as mass mailing, telephone
46 banks and billboards have proven to be effective means of
47 election communication in West Virginia. Broadcast,
48 satellite and non-broadcast media have all been used to
49 influence election outcomes.

50 (10) Mass mailing and telephone communications can be
51 more effective campaign methods than broadcast media
52 because such communications can be targeted to registered
53 voters or historical voters in the particular district. In
54 contrast, broadcasted messages reach all of the general
55 public, including person ineligible to vote in the district.

56 (11) Mass mailings or telephone communications in the
57 final days of a campaign can be particularly damaging to the
58 public's confidence in the election process because they
59 reduce or make impossible an effective response.

60 (12) Identifying those funding mass mailing or telephone
61 campaigns in the final days of a campaign may at least permit
62 voters to evaluate the credibility of the message.

63 (13) In West Virginia, contributions up to the amounts
64 specified in this article allow contributors to express their
65 opinions, level of support and their affiliations.

66 (14) In West Virginia, campaign expenditures by entities
67 and persons who are not candidates have been increasing.
68 Public confidence is eroded when substantial amounts of
69 such money, the source of which is hidden or disguised, is
70 expended. This is particularly true during the final days of
71 a campaign.

72 (15) In West Virginia, contributions to political
73 organizations (defined in Section 527(e)(1) of the Internal
74 Revenue Code of 1986) substantially larger than the amounts
75 permitted to be received by a candidate's political committee
76 have been recorded and are considered by the legislature to
77 be large contributions.

78 (16) Independent expenditures intended to influence
79 candidates' campaigns in the State are increasingly utilizing
80 non-broadcast media to support or defeat candidates.

81 (17) Identification of persons or entities funding political
82 advertisements assists in enforcement of the contribution and
83 expenditure limitations established by this article and simply
84 informs voters of the actual identities of persons or entities
85 advocating the election or defeat of candidates.

86 (18) Identification of persons or entities funding political
87 advertisements allows voters to evaluate the credibility of the
88 message contained in the advertisement.

89 (19) Disclosure of the identity of persons or entities
90 funding political communications regarding candidates
91 bolsters the right of listeners to be fully informed.

92 (b) Political campaign contributions, receipts and
93 expenditures of money, advertising, influence and control of
94 employees, and other economic, political and social control
95 factors incident to primary, special and general elections shall
96 be regulated and controlled by the provisions of this article
97 and other applicable provisions of this chapter.

§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) "Billboard" means a commercially available outdoor
9 advertisement, sign or similar display regularly available for
10 lease or rental to advertise a person, place or product.

11 (3) "Broadcast, cable or satellite communication" means a
12 communication that is publicly distributed by a television
13 station, radio station, cable television system or satellite
14 system.

15 (4) "Candidate" means an individual who:

16 (A) Has filed a certificate of announcement under section
17 seven, article five of this chapter or a municipal charter;

18 (B) Has filed a declaration of candidacy under section
19 twenty-three, article five of this chapter;

20 (C) Has been named to fill a vacancy on a ballot; or

21 (D) Has declared a write-in candidacy or otherwise publicly
22 declared his or her intention to seek nomination or election for
23 any state, district, county or municipal office or party office to
24 be filled at any primary, general or special election.

25 (5) "Candidate's committee" means a political committee
26 established with the approval of or in cooperation with a
27 candidate or a prospective candidate to explore the
28 possibilities of seeking a particular office or to support or aid
29 his or her nomination or election to an office in an election
30 cycle. If a candidate directs or influences the activities of
31 more than one active committee in a current campaign, those
32 committees shall be considered one committee for the
33 purpose of contribution limits.

34 (6) "Clearly identified" means that the name, nickname,
35 photograph, drawing or other depiction of the candidate
36 appears or the identity of the candidate is otherwise apparent
37 through an unambiguous reference, such as "the Governor,"
38 "your Senator" or "the incumbent" or through an
39 unambiguous reference to his or her status as a candidate,
40 such as "the Democratic candidate for Governor" or "the
41 Republican candidate for Supreme Court of Appeals."

42 (7) "Contribution" means a gift subscription, assessment,
43 payment for services, dues, advance, donation, pledge,
44 contract, agreement, forbearance or promise of money or
45 other tangible thing of value, whether conditional or legally
46 enforceable, or a transfer of money or other tangible thing of
47 value to a person, made for the purpose of influencing the
48 nomination, election or defeat of a candidate. An offer or
49 tender of a contribution is not a contribution if expressly and
50 unconditionally rejected or returned. A contribution does not
51 include volunteer personal services provided without
52 compensation: *Provided*, That a nonmonetary contribution is
53 to be considered at fair market value for reporting
54 requirements and contribution limitations.

55 (8) "Corporate political action committee" means a
56 political action committee that is a separate segregated fund
57 of a corporation that may only accept contributions from its
58 restricted group as outlined by the rules of the State Election
59 Commission.

60 (9) "Direct costs of purchasing, producing or
61 disseminating electioneering communications" means:

62 (A) Costs charged by a vendor, including, but not limited
63 to, studio rental time, compensation of staff and employees,
64 costs of video or audio recording media and talent, material
65 and printing costs and postage; or

66 (B) The cost of airtime on broadcast, cable or satellite
67 radio and television stations, the costs of disseminating
68 printed materials, establishing a telephone bank, studio time,
69 use of facilities and the charges for a broker to purchase
70 airtime.

71 (10) "Disclosure date" means either of the following:

72 (A) The first date during any calendar year on which any
73 electioneering communication is disseminated after the
74 person paying for the communication has spent a total of five
75 thousand dollars or more for the direct costs of purchasing,
76 producing or disseminating electioneering communications;
77 or

78 (B) Any other date during that calendar year after any
79 previous disclosure date on which the person has made
80 additional expenditures totaling five thousand dollars or more
81 for the direct costs of purchasing, producing or disseminating
82 electioneering communications.

83 (11) "Election" means any primary, general or special
84 election conducted under the provisions of this code or under
85 the charter of any municipality at which the voters nominate

86 or elect candidates for public office. For purposes of this
87 article, each primary, general, special or local election
88 constitutes a separate election. This definition is not intended
89 to modify or abrogate the definition of the term "nomination"
90 as used in this article.

91 (12)(A) "Electioneering communication" means any paid
92 communication made by broadcast, cable or satellite signal,
93 mass mailing, telephone bank, billboard advertising, or
94 published in any newspaper, magazine or other periodical
95 that:

96 (i) Refers to a clearly identified candidate for Governor,
97 Secretary of State, Attorney General, Treasurer, Auditor,
98 Commissioner of Agriculture, Supreme Court of Appeals or
99 the Legislature;

100 (ii) Is publicly disseminated within:

101 (I) Thirty days before a primary election at which the
102 nomination for office sought by the candidate is to be
103 determined; or

104 (II) Sixty days before a general or special election at
105 which the office sought by the candidate is to be filled; and

106 (iii) Is targeted to the relevant electorate: *Provided*, That
107 for purposes of the general election of two thousand eight the
108 amendments to this article shall be effective the first day of
109 October, two thousand eight.

110 (B) "Electioneering communication" does not include:

111 (i) A news story, commentary or editorial disseminated
112 through the facilities of any broadcast, cable or satellite
113 television or radio station, newspaper, magazine or other
114 periodical publication not owned or controlled by a political
115 party, political committee or candidate: *Provided*, That a

116 news story disseminated through a medium owned or
117 controlled by a political party, political committee or
118 candidate is nevertheless exempt if the news is:

119 (I) A bona fide news account communicated in a
120 publication of general circulation or through a licensed
121 broadcasting facility; and

122 (II) Is part of a general pattern of campaign-related news
123 that gives reasonably equal coverage to all opposing
124 candidates in the circulation, viewing or listening area;

125 (ii) Activity by a candidate committee, party executive
126 committee or caucus committee, or a political action committee
127 that is required to be reported to the State Election Commission
128 or the Secretary of State as an expenditure pursuant to section
129 five of this article or the rules of the State Election Commission
130 or the Secretary of State promulgated pursuant to such
131 provision: *Provided*, That independent expenditures by a party
132 executive committee or caucus committee or a political action
133 committee required to be reported pursuant to subsection (b),
134 section two of this article are not exempt from the reporting
135 requirements of this section;

136 (iii) A candidate debate or forum conducted pursuant to
137 rules adopted by the State Election Commission or the
138 Secretary of State or a communication promoting that debate
139 or forum made by or on behalf of its sponsor;

140 (iv) A communication paid for by any organization
141 operating under Section 501(c)(3) of the Internal Revenue
142 Code of 1986;

143 (v) A communication made while the Legislature is in
144 session which, incidental to promoting or opposing a specific
145 piece of legislation pending before the Legislature, urges the
146 audience to communicate with a member or members of the
147 Legislature concerning that piece of legislation;

148 (vi) A statement or depiction by a membership
149 organization, in existence prior to the date on which the
150 individual named or depicted became a candidate, made in a
151 newsletter or other communication distributed only to bona
152 fide members of that organization;

153 (vii) A communication made solely for the purpose of
154 attracting public attention to a product or service offered for
155 sale by a candidate or by a business owned or operated by a
156 candidate which does not mention an election, the office
157 sought by the candidate or his or her status as a candidate; or

158 (viii) A communication, such as a voter's guide, which
159 refers to all of the candidates for one or more offices, which
160 contains no appearance of endorsement for or opposition to
161 the nomination or election of any candidate and which is
162 intended as nonpartisan public education focused on issues
163 and voting history.

164 (13) "Expressly advocating" means any communication
165 that:

166 (A) Uses phrases such as "vote for the Governor,"
167 "re-elect your Senator," "support the Democratic nominee for
168 Supreme Court," "cast your ballot for the Republican
169 challenger for House of Delegates," "Smith for House," "Bob
170 Smith in '04," "vote Pro-Life" or "vote Pro-Choice"
171 accompanied by a listing of clearly identified candidates
172 described as Pro-Life or Pro-Choice, "vote against Old
173 Hickory," "defeat" accompanied by a picture of one or more
174 candidates, "reject the incumbent," or communications of
175 campaign slogans or individual words, that in context can
176 have no other reasonable meaning than to urge the election
177 or defeat of one or more clearly identified candidates, such as
178 posters, bumper stickers, advertisements, etc. which say
179 "Smith's the One," "Jones '06," "Baker"; or

180 (B) When considered in its entirety, the communication
181 can only be interpreted by a reasonable person as advocating

182 the election or defeat of one or more clearly identified
183 candidates because:

184 (i) The electoral portion of the communication is
185 unmistakable, unambiguous, and suggestive of only one
186 meaning; and

187 (ii) Reasonable minds could not differ as to whether it
188 encourages actions to elect or defeat one or more clearly
189 identified candidates.

190 (14) "Financial agent" means any individual acting for
191 and by himself or herself, or any two or more individuals
192 acting together or cooperating in a financial way to aid or
193 take part in the nomination or election of any candidate for
194 public office, or to aid or promote the success or defeat of
195 any political party at any election.

196 (15) "Fund-raising event" means an event such as a
197 dinner, reception, testimonial, cocktail party, auction or
198 similar affair through which contributions are solicited or
199 received by such means as the purchase of a ticket, payment
200 of an attendance fee or by the purchase of goods or services.

201 (16) "Independent expenditure" means an expenditure by
202 a person:

203 (A) Expressly advocating the election or defeat of a
204 clearly identified candidate; and

205 (B) That is not made in concert or cooperation with or at
206 the request or suggestion of such candidate, his or her agents,
207 the candidate's authorized political committee or a political
208 party committee or its agents.

209 Supporting or opposing the election of a clearly identified
210 candidate includes supporting or opposing the candidates of
211 a political party. An expenditure which does not meet the

212 criteria for an independent expenditure is considered a
213 contribution.

214 (17) "Mass mailing" means a mailing by United States
215 mail, facsimile or electronic mail of more than five hundred
216 pieces of mail matter of an identical or substantially similar
217 nature within any thirty-day period. For purposes of this
218 subdivision, substantially similar includes communications
219 that contain substantially the same template or language, but
220 vary in non-material respects such as communications
221 customized by the recipient's name, occupation, or
222 geographic location.

223 (18) "Membership organization" means a group that
224 grants bona fide rights and privileges, such as the right to
225 vote, to elect officers or directors and the ability to hold
226 office, to its members and which uses a majority of its
227 membership dues for purposes other than political purposes.
228 "Membership organization" does not include organizations
229 that grant membership upon receiving a contribution.

230 (19) "Name" means the full first name, middle name or
231 initial, if any, and full legal last name of an individual and the
232 full name of any association, corporation, committee or other
233 organization of individuals, making the identity of any person
234 who makes a contribution apparent by unambiguous
235 reference.

236 (20) "Person" means an individual, partnership,
237 committee, association and any other organization or group
238 of individuals.

239 (21) "Political action committee" means a committee
240 organized by one or more persons for the purpose of
241 supporting or opposing the nomination or election of one or
242 more candidates. The following are types of political action
243 committees:

244 (A) A corporate political action committee, as that term
245 is defined by subdivision (8) of this section;

246 (B) A membership organization, as that term is defined
247 by subdivision(18) of this section;

248 (C) An unaffiliated political action committee, as that
249 term is defined by subdivision(29) of this section.

250 (22) "Political committee" means any candidate
251 committee, political action committee or political party
252 committee.

253 (23) "Political party" means a political party as that term is
254 defined by section eight, article one of this chapter or any
255 committee established, financed, maintained or controlled by the
256 party, including any subsidiary, branch or local unit thereof and
257 including national or regional affiliates of the party.

258 (24) "Political party committee" means a committee
259 established by a political party or political party caucus for
260 the purposes of engaging in the influencing of the election,
261 nomination or defeat of a candidate in any election.

262 (25) "Political purposes" means supporting or opposing
263 the nomination, election or defeat of one or more candidates
264 or the passage or defeat of a ballot issue, supporting the
265 retirement of the debt of a candidate or political committee or
266 the administration or activities of an established political
267 party or an organization which has declared itself a political
268 party and determining the advisability of becoming a
269 candidate under the precandidacy financing provisions of this
270 chapter.

271 (26) "Targeted to the relevant electorate" means a
272 communication which refers to a clearly identified candidate
273 for statewide office or the Legislature and which can be
274 received by ten thousand or more individuals in the state in

275 the case of a candidacy for statewide office and five hundred
276 or more individuals in the district in the case of a candidacy
277 for the Legislature.

278 (27) "Telephone bank" means telephone calls that are
279 targeted to the relevant electorate, other than telephone calls
280 made by volunteer workers, regardless of whether paid
281 professionals designed the telephone bank system, developed
282 calling instructions or trained volunteers.

283 (28) "Two-year election cycle" means the 24-month
284 period that begins the day after a general election and ends on
285 the day of the subsequent general election.

286 (29) "Unaffiliated political action committee" means a
287 political action committee that is not affiliated with a
288 corporation or a membership organization.

§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 subdivisions (21) and

18 (24), section one-a of this article, if any; and whether the
19 committee will participate in statewide, county or municipal
20 elections. The form shall be certified as accurate and true
21 and signed by the chairman and the treasurer of the
22 committee: *Provided*, That a change of treasurer or financial
23 agent may be made at any time by filing a written statement
24 with the Secretary of State.

25 (b) No person may act as the treasurer for any candidate
26 for nomination or election to any statewide office, or to any
27 office encompassing an election district larger than a county
28 or to any legislative office unless a written statement
29 designating that person as the treasurer or financial agent is
30 filed with the Secretary of State at least twenty-eight days
31 before the election at which that person is to act as a treasurer
32 and is received by the Secretary of State before midnight,
33 eastern standard time, of that day or if mailed, is postmarked
34 before that hour: *Provided*, That a change of treasurer or
35 financial agent may be made at any time by filing a written
36 statement with the Secretary of State.

37 (c) No person may act as treasurer of any committee or
38 as financial agent for any candidate to be nominated or
39 elected by the voters of a county or a district therein, except
40 legislative candidates, or as the financial agent for a
41 candidate for the nomination or election to any other office,
42 unless a written statement designating him or her as the
43 treasurer or financial agent is filed with the clerk of the
44 county commission at least twenty-eight days before the
45 election at which he or she is to act and is received before
46 midnight, eastern standard time, of that day or if mailed, is
47 postmarked before that hour: *Provided*, That a change of
48 treasurer may be made at any time by filing a written
49 statement with the clerk of the county commission.

50 (d) Notwithstanding the provisions of subsections (a), (b)
51 and (c) of this section, a filing designating a treasurer for a
52 state or county political executive committee may be made

53 anytime before the committee either accepts or spends funds.
54 Once a designation is made by a state or county political
55 executive committee, no additional designations are required
56 under this section until a successor treasurer is designated.
57 A state or county political executive committee may
58 terminate a designation made pursuant to this section by
59 making a written request to terminate the designation and by
60 stating in the request that the committee has no funds
61 remaining in the committee's account. This written request
62 shall be filed with either the Secretary of State or the clerk of
63 the county commission as provided by subsections (a), (b)
64 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 by an independent expenditure,
4 supporting a political committee established pursuant to
5 paragraph (C), subdivision (1), subsection (b), section eight
6 of this article or engaging in other activities permitted by this
7 section and also including the treasurer or equivalent officer
8 of the association or organization, expressly advocating the
9 election or defeat of a clearly identified candidate for state,
10 district, county or municipal office, and the treasurer of every
11 political committee shall keep detailed accounts of every sum
12 of money or other thing of value received by him or her,
13 including all loans of money or things of value and of all
14 expenditures and disbursements made, liabilities incurred, by
15 the candidate, financial agent, person, association or
16 organization or committee, for political purposes, or by any
17 of the officers or members of the committee, or any person
18 acting under its authority or on its behalf.

19 (b) Every person or association of persons required to
20 keep detailed accounts under this section shall file with the
21 officers hereinafter prescribed a detailed itemized sworn
22 statement:

23 (1) Of all financial transactions, whenever the total
24 exceeds five hundred dollars, which have taken place before
25 the last Saturday in March, to be filed within six days
26 thereafter and annually whenever the total of all financial
27 transactions relating to an election exceeds five hundred
28 dollars;

29 (2) Of all financial transactions which have taken place
30 before the fifteenth day preceding each primary or other
31 election and subsequent to the previous statement, if any, to
32 be filed within four business days after the fifteenth day;

33 (3) Of all financial transactions which have taken place
34 before the thirteenth day after each primary or other election
35 and subsequent to the previous statement, if any, to be filed
36 within four business days after the thirteenth day; and

37 (4) Of all financial transactions, whenever the total
38 exceeds five hundred dollars or whenever any loans are
39 outstanding, which have taken place before the forty-third
40 day preceding the general election day, to be filed within four
41 business days after the forty-third day.

42 (c) Every person who announces as a write-in candidate
43 for any elective office and his or her financial agent or
44 election organization of any kind shall comply with all of the
45 requirements of this section after public announcement of the
46 person's candidacy has been made.

47 (d) For purposes of this section, the term "financial
48 transactions" includes all contributions or loans received and
49 all repayments of loans or expenditures made to promote the
50 candidacy of any person by any candidate or any
51 organization advocating or opposing the nomination, election
52 or defeat of any candidate to be voted on.

53 (e) Candidates for the office of conservation district
54 supervisor elected pursuant to the provisions of article

55 twenty-one-a, chapter nineteen of this code are required to
56 file only the reports required by subdivisions (2) and (3),
57 subsection (b) of this section immediately prior to and after
58 the primary election: *Provided*, That during the election in
59 the year two thousand eight, the statements required by this
60 subsection shall be filed immediately prior to and after the
61 general election.

**§3-8-8. Corporation contributions forbidden; exceptions;
penalties; promulgation of rules; additional powers
of State Election Commission.**

1 (a) Notwithstanding any provision of section two-b of
2 this article, no officer, agent or person acting on behalf of any
3 corporation, whether incorporated under the laws of this or
4 any other state or of a foreign country, may pay, give, lend or
5 authorize to be paid, given or lent any money or other thing
6 of value belonging to the corporation for the purpose of
7 expressly advocating the election or defeat of a clearly
8 identified candidate for state, district, county or municipal
9 office, to any candidate, financial agent, political committee
10 or other person. No person may solicit or receive any
11 payment, contribution or other thing from any corporation or
12 from any officer, agent or other person acting on behalf of the
13 corporation.

14 (b)(1) The provisions of this section do not prohibit a
15 corporation from:

16 (A) Directly communicating with its stockholders and
17 executive or administrative personnel and their families on
18 any subject: *Provided*, That the communication is not by
19 newspapers of general circulation, radio, television or
20 billboard advertising likely to reach the general public;

21 (B) Conducting nonpartisan registration and
22 get-out-the-vote campaigns aimed at its stockholders and
23 executive or administrative personnel and their families;

24 (C) Soliciting, through any officer, agent or person acting
25 on behalf of the corporation, contributions to a separate
26 segregated fund to be used for political purposes. Any
27 separate segregated fund is considered a political action
28 committee for the purpose of this article and is subject to all
29 reporting requirements applicable to political action
30 committees; and

31 (D) Corporations may make disbursements for political
32 purposes, as such are defined by the provisions of
33 subdivision (25), subsection (a), section one-a of this article,
34 that do not expressly advocate for the election or defeat of a
35 clearly identified candidate. A disbursement for political
36 purposes is permissible if it:

37 (i) Does not reference an election, candidacy, political
38 party, opposing candidate or voting by the general public;

39 (ii) Does not take a position on any candidate's or
40 officeholder's character, qualifications, or fitness for office;
41 and

42 (iii) Focuses on a legislative, executive, or judicial matter
43 or issue which either:

44 (I) Urges a candidate to take a particular position or
45 action with respect to the matter or issue; or

46 (II) Urges the public to adopt a particular position and to
47 contact the candidate with respect to the matter or issue; or

48 (iv) Proposes a commercial transaction, such as purchase
49 of a book, video, or other product or service, or attendance
50 (for a fee) at a film exhibition or other event.

51 (2) It is unlawful for:

52 (A) A separate segregated fund to make a primary or
53 other election contribution or expenditure by using money or

54 anything of value secured: (i) By physical force, job
55 discrimination or financial reprisal; (ii) by the threat of force,
56 job discrimination or financial reprisal; (iii) as a condition of
57 employment; or (iv) in any commercial transaction;

58 (B) Any person soliciting a stockholder or executive or
59 administrative personnel and members of their families for a
60 contribution to a separate segregated fund to fail to inform
61 the person solicited of the political purposes of the separate
62 segregated fund at the time of the solicitation;

63 (C) Any person soliciting any other person for a
64 contribution to a separate segregated fund to fail to inform
65 the person solicited at the time of the solicitation of his or her
66 right to refuse to contribute without any reprisal;

67 (D) A corporation or a separate segregated fund
68 established by a corporation: (i) To solicit contributions to
69 the fund from any person other than the corporation's
70 stockholders and their families and its executive or
71 administrative personnel and their families; or (ii) to
72 contribute any corporate funds;

73 (E) A corporation or a separate segregated fund
74 established by a corporation to receive contributions to the
75 fund from any person other than the corporation's
76 stockholders and their immediate families and its executive
77 or administrative personnel and their immediate families;

78 (F) A corporation to engage in job discrimination or to
79 discriminate in job promotion or transfer because of an
80 employee's failure to make a contribution to a separate
81 segregated fund;

82 (G) A separate segregated fund to make any contribution,
83 directly or indirectly, in excess of one thousand dollars in
84 connection with or on behalf of any campaign for nomination
85 or election to any elective office in the state or any of its

86 subdivisions, or in connection with or on behalf of any
87 committee or other organization or person engaged in
88 furthering, advancing, supporting or aiding the nomination or
89 election of any candidate for any such office;

90 (H) A corporation to pay, give or lend or to authorize
91 payment, giving or lending of any moneys or other things of
92 value belonging to the corporation to a separate segregated
93 fund for any purpose. This provision does not prohibit a
94 separate segregated fund from using the property, real or
95 personal, facilities and equipment of a corporation solely to
96 establish, administer and solicit contributions to the fund,
97 subject to the rules of the State Election Commission as
98 provided in subsection (d) of this section: *Provided*, That
99 any such corporation shall also permit any group of its
100 employees represented by a bona fide political action
101 committee to use the real property of the corporation solely
102 to establish, administer and solicit contributions to the fund
103 of the political action committee, subject to the rules of the
104 State Election Commission promulgated in accordance with
105 said subsection. No corporation may use its property, real or
106 personal, facilities, equipment, materials or services for the
107 purpose of expressly advocating the election or defeat of a
108 clearly identified candidate for state, district, county or
109 municipal office.

110 (3) For the purposes of this section, the term "executive
111 or administrative personnel" means individuals employed by
112 a corporation who are paid on a salary rather than hourly
113 basis and who have policy-making, managerial, professional
114 or supervisory responsibilities.

115 (c) Any person or corporation violating any provision of
116 this section is guilty of a misdemeanor and, on conviction,
117 shall be fined not more than ten thousand dollars. No
118 corporation may reimburse any person the amount of any fine
119 imposed pursuant to this section.

120 (d) To ensure uniform administration and application of
121 the provisions of this section and of those of the Federal
122 Election Campaign Act Amendments of 1976 relating to
123 corporate contributions, the State Election Commission shall
124 propose rules for legislative approval in accordance with the
125 provisions of article three, chapter twenty-nine-a of this code
126 to implement the provisions of this section consistent, insofar
127 as practicable, with the rules and regulations promulgated by
128 the Federal Election Commission to carry out similar or
129 identical provisions of 2 U.S.C. §441b.

130 (e) In addition to the powers and duties set forth in article
131 one-a of this chapter, the State Election Commission has the
132 following powers and duties:

133 (1) To investigate, upon complaint or on its own
134 initiative, any alleged violations or irregularities of this
135 article.

136 (2) To administer oaths and affirmations, issue subpoenas
137 for the attendance of witnesses, issue subpoenas duces tecum
138 to compel the production of books, papers, records and all
139 other evidence necessary to any investigation.

140 (3) To involve the aid of any circuit court in the
141 execution of its subpoena power.

142 (4) To report any alleged violations of this article to the
143 appropriate prosecuting attorney having jurisdiction, which
144 prosecuting attorney shall present to the grand jury such
145 alleged violations, together with all evidence relating thereto,
146 no later than the next term of court after receiving the report.

147 (f) The Attorney General shall, when requested, provide
148 legal and investigative assistance to the State Election
149 Commission.

150 (g) Any investigation, either upon complaint or initiative,
151 shall be conducted in an executive session of the State

152 Election Commission and shall remain undisclosed except
153 upon an indictment by a grand jury.

154 (h) Any person who discloses the fact of any complaint,
155 investigation or report or any part thereof, or any proceedings
156 thereon, is guilty of a misdemeanor and, upon conviction,
157 shall be fined not less than one thousand dollars, nor more
158 than five thousand dollars, and shall be imprisoned in jail not
159 less than six months nor more than one year.

160 (i) The amendments to this section enacted during the
161 second extraordinary session of two thousand eight are
162 intended to conform to the existing proscription to
163 constitutionally permissible limits and not to create a new
164 offense or offenses.

165 (j) The effective date of the amendments to this section
166 enacted during the second extraordinary legislative session of
167 two thousand eight shall be the first day of October, two
168 thousand eight.

ARTICLE 9. OFFENSES AND PENALTIES

§3-9-14. Unlawful acts by corporations; penalties.

1 (a) Except as provided in section eight, article eight of
2 this chapter, any corporation which shall, by its officers,
3 agents or otherwise, offer, give or use, or cause to be offered,
4 given or used, or place or cause to be placed, in the
5 possession, under the control or at the disposal of another, to
6 be offered, given or used, directly or indirectly, money or
7 other thing of value, for the purpose of expressly advocating
8 the election or defeat of a clearly identified candidate for a
9 state, district, county or municipal office, it shall be guilty of
10 a misdemeanor, and, upon conviction thereof, shall be fined
11 not less than five thousand nor more than twenty thousand
12 dollars for every such offense, at the discretion of the jury.

13 (b) As used in this section, the terms “clearly identified,”
14 and “expressly advocating” shall have the meaning ascribed
15 thereto by the provisions of section one-a, article eight of this
16 chapter.

17 (c) The amendments to this section enacted during the
18 second extraordinary session of two thousand eight are
19 intended to conform the existing proscription to
20 constitutionally permissible limits and not to create a new
21 offense or offenses.

22 (d) The effective date of the amendments to this section
23 enacted during the second extraordinary legislative session of
24 two thousand eight shall be the first day of October, two
25 thousand eight.



CHAPTER 14

**(H.B. 215- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §10-1-5 of the Code of West Virginia, 1931, as amended, relating to term of office for members of library boards of directors.

Be it enacted by the Legislature of West Virginia:

That §10-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC LIBRARIES.**§10-1-5. Board of library directors -- Qualifications; term of office; vacancies; removal; no compensation.**

1 (a) Whenever a public library is established under this
2 article, the governing authority or authorities shall appoint a
3 board of directors with five members chosen with reference
4 to their fitness for such office, from:

5 (1) The citizens of the library's service area, as
6 determined by the Library Commission; or

7 (2) The county in which the library is located.

8 (b) The board of directors for a regional library shall
9 consist of not less than five nor more than ten members, with
10 a minimum of one member from each county in the region.
11 The total number of directors and the apportionment of
12 directors by county shall be determined by joint action of the
13 governing authorities concerned.

14 (c) The term of office for a director is five years from the
15 first day of July following the appointment. Directors may
16 serve until their successors are appointed and qualified.

17 (d) For a new board of directors under this article, the
18 initial appointment of the directors shall be staggered.
19 Thereafter all appointments shall be for terms of five years.

20 (e) Vacancies in the board shall be immediately reported
21 by the board to the governing authority and filled by
22 appointment. Vacancies for an unexpired term shall be
23 immediately reported by the board to the governing authority
24 and filled by appointment for the remainder of the term only.

25 (f) A director may be removed for just cause in the
26 manner provided by the bylaws of the library board.

27 (g) No compensation shall be paid to any director.

CHAPTER 15

**(H.B. 214- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §5-5-2 of the Code of West Virginia, 1931, as amended, relating to annual incremental salary increases to certain state employees based on years of service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

1 (a) Every eligible employee with three or more years of
2 service shall receive an annual salary increase equal to sixty
3 dollars times the employee's years of service. In each fiscal
4 year and on the first day of July, each eligible employee shall
5 receive an annual increment increase of sixty dollars for that
6 fiscal year.

7 (b) Every employee becoming newly eligible as a result
8 of meeting the three years of service minimum requirement
9 on the first day of July in any fiscal year is entitled to the
10 annual salary increase equal to sixty dollars times the

11 employee's years of service, where he or she has not in a
12 previous fiscal year received the benefit of an increment
13 computation. Thereafter, the employee shall receive a single
14 annual increment increase of sixty dollars for each
15 subsequent fiscal year.

16 (c) These incremental increases are in addition to any
17 across-the-board, cost-of-living or percentage salary
18 increases which may be granted in any fiscal year by the
19 Legislature.

20 (d) This section shall not be construed to prohibit other
21 pay increases based on merit, seniority, promotion or other
22 reason, if funds are available for the other pay increases:
23 *Provided*, That the executive head of each spending unit shall
24 first grant the mandated increase in compensation in this
25 section to all eligible employees prior to the consideration of
26 any increases based on merit, seniority, promotion or other
27 reason.

CHAPTER 16

**(H.B. 216- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §5-5-6 of the Code of West Virginia, 1931, as amended, relating to payments to certain state employees for unused sick days; clarifying the formula for "daily rate of pay"; creating the State Employee Sick Leave Fund; and requiring the Secretary of the Department of Administration to promulgate rules related to reimbursement

for payments made to employees whose salaries are funded in whole or in part by a source other than the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §5-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-6. Payment for unused sick leave.

1 (a) Every eligible employee, as defined in section one of
2 this article, who is entitled upon retirement to credit his or her
3 accrued annual and sick leave for extended insurance
4 coverage as provided in section thirteen, article sixteen of this
5 chapter, and who has accumulated at least sixty-five days of
6 unused sick leave may be paid, at his or her option, for
7 unused sick leave in an amount of days as designated by the
8 employee not to exceed the number of sick leave days that
9 would reduce an employee's sick leave balance to less than
10 fifty days. The employee shall be paid at a rate equal to one
11 quarter of their usual rate of daily pay during that calendar
12 year. The "daily rate of pay" of an employee paid a monthly
13 salary is calculated by multiplying the monthly salary by
14 twelve and dividing that number by the number of workdays
15 for that calendar year. As used in this section, "workday"
16 does not include weekends. Any payment for unused sick
17 leave may not be a part of final average salary computation.

18 (b) Payment for unused sick leave may be made only
19 once per fiscal year on either the pay day immediately
20 following the first full pay period in July or the first full pay
21 period in December. Payments shall be made out of the fund
22 established in subsection (e) of this section.

23 (c) Any eligible employee opting to receive payment in
24 exchange for unused sick leave must contract, in a form to be
25 prescribed by the Department of Administration, agreeing to
26 reimburse the fund for the amount exchanged plus twelve
27 percent per annum if the employee elects to separate from
28 employment within sixty months of the date of the exchange
29 pursuant to subsection (a) of this section. The Department of
30 Administration shall pursue collection of the obligation,
31 either by itself, or by contracting with a collection agency.
32 For purposes of this section, "separation" does not include
33 separation from employment by death or retirement, but does
34 refer to any other manner in which employment may be
35 terminated.

36 (d) Payments shall be made in the order that eligible
37 employees apply for the payments so long as funds are
38 available. In the event the fund is insufficient to pay all
39 employees who have applied for payment in a fiscal year,
40 employees who do not receive payment are eligible for
41 payment in the next fiscal year, are not required to reapply
42 and shall receive payment in the order in which they first
43 applied, unless the employee chooses to withdraw the
44 application prior to the next fiscal year.

45 (e) Effective the first day of July, two thousand eight,
46 there is created a special revenue account within the State
47 Treasury to be known as the State Employee Sick Leave
48 Fund. The fund shall consist of moneys appropriated by the
49 Legislature, moneys deposited into the fund in accordance
50 with administrative rules of the Department of
51 Administration, and any interest or other return to moneys in
52 the fund. The fund shall be administrated by the Secretary of
53 the Department of Administration.

54 (f) The secretary shall promulgate rules pursuant to
55 article three, chapter twenty-nine-a of this code to implement
56 the provisions of this section. The rules shall include, but not

57 be limited to, provisions for the application process and a rule
58 authorizing the secretary to obtain reimbursement, where
59 available and appropriate, to the State Employee Sick Leave
60 Fund from any spending unit for a pro rata share of payments
61 made under the provisions of this section to any employee
62 whose salary is paid, in whole or in part, from a funding
63 source other than the General Revenue Fund.

64 (g) Each spending unit, as defined in section one of this
65 article, shall verify to the secretary whether an employee is
66 eligible for payment under this section, shall verify the
67 funding source or sources of the employee's salary, and shall
68 verify the total number of unused sick leave days for all
69 employees at least once per year. The secretary shall
70 maintain sick leave records for all spending units. All sick
71 leave days for which an employee is paid as provided in this
72 section shall be deducted from the employee's sick leave
73 balance by the secretary and the secretary shall verify to each
74 spending unit the amount of days that have been deducted
75 from an employee's sick leave balance. An employee shall
76 not be permitted to reacquire any sick leave days for which
77 he or she received payment under the provisions of this
78 section.

CHAPTER 17

**(H.B. 211- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect ninety days from passage.]

[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating generally to records and reports of scrap metal purchasers; amending the definition of

scrap metal to include catalytic converters; exempting certain purchasers of vehicles and replacement catalytic converters for vehicles from the reporting requirements of this section; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

1 (a) For the purposes of this section, the following terms
2 have the following meanings.

3 (1) “Business registration certificate” has the same
4 meaning ascribed to it in section two, article twelve, chapter
5 eleven of this code.

6 (2) “Purchaser” means any person in the business of
7 purchasing scrap metal or used auto parts, any salvage yard
8 owner or operator, or any public or commercial recycling
9 facility owner or operator, or any agent or employee thereof,
10 who purchases any form of scrap metal or used auto parts.

11 (3) “Scrap metal” means any form of copper, aluminum,
12 brass, lead or other nonferrous metal of any kind, a catalytic
13 converter or any materials derived from a catalytic converter,
14 or steel railroad track and track material.

15 (b) Any purchaser of scrap metal shall make a record of
16 such purchase that shall contain the following information for
17 each transaction:

18 (1) The full name, permanent home and business
19 addresses, and telephone number, if available, of the seller;

20 (2) A description and the motor vehicle license number
21 of any vehicle used to transport the purchased scrap metal to
22 the place of purchase;

23 (3) The time and date of the transaction;

24 (4) A complete description of the kind, character and
25 weight of the scrap metal purchased; and

26 (5) A statement of whether the scrap metal was
27 purchased, taken as collateral for a loan, or taken on
28 consignment.

29 (c) A purchaser also shall require and retain from the
30 seller of the scrap metal the following:

31 (1) A signed certificate of ownership of the scrap metal
32 being sold or a signed authorization from the owner of the
33 scrap metal to sell said scrap metal; and

34 (2) A photocopy of a valid driver's license or
35 identification card issued by the West Virginia Division of
36 Motor Vehicles of the person delivering the scrap metal, or
37 in lieu thereof, any other valid photo identification of the
38 seller issued by any other state or the federal government:
39 *Provided*, That, if the purchaser has a copy of the seller's
40 valid photo identification on file, the purchaser may reference
41 the identification that is on file, without making a separate
42 photocopy for each transaction.

43 (d) It is unlawful for any purchaser to purchase any scrap
44 metal without obtaining and recording the information
45 required under subsections (b) and (c) of this section. The
46 provisions of this subsection do not apply to purchases made
47 at wholesale under contract or as a result of a bidding

48 process: *Provided*, That the purchaser retains and makes
49 available for review consistent with subsection (f) of this
50 section the contract, bill of sale, or similar documentation of
51 the purchase made at wholesale under contract or as a result
52 of a bidding process: *Provided, however*, That the purchaser
53 may redact any pricing or other commercially sensitive
54 information from said contract, bill of sale, or similar
55 documentation before making it available for inspection.

56 (e) No purchaser of scrap metal may knowingly purchase
57 or possess a stainless steel or aluminum beer keg, whether
58 damaged or undamaged, or any reasonably recognizable part
59 thereof, for the intended purpose of reselling as scrap metal
60 unless the purchaser receives the keg or keg parts from the
61 beer manufacturer or its authorized representative.

62 (f) Within thirty days of the effective date of the
63 amendment and reenactment of this section during the second
64 extraordinary session of the Legislature in two thousand
65 seven, the West Virginia State Police shall make available a
66 standard form purchasers of scrap metal may use to record all
67 the information required under subsections (b) and (c) of this
68 section.

69 (g) Using the form authorized under subsection (f) above,
70 or his or her own form, a purchaser of scrap metal shall retain
71 the records required by this section at his or her place of
72 business for not less than three years after the date of the
73 purchase. Upon completion of a purchase, the records
74 required to be retained at a purchaser's place of business shall
75 be available for inspection by any law-enforcement officer
76 or, upon written request and during the purchaser's regular
77 business hours, by any investigator employed by a public
78 utility or railroad to investigate the theft of public utility or
79 railroad property: *Provided*, That in lieu of the purchaser
80 keeping the records at their place of business, the purchaser
81 shall file the records with the local detachment of the State
82 Police and with the chief of police of the municipality or the

83 sheriff of the county wherein he or she is transacting business
84 within seventy-two hours of completion of the purchase. The
85 records shall be retained by the State Police and the chief of
86 police of the municipality or the sheriff for a period of not
87 less than three years.

88 (h) To the extent otherwise permitted by law, any
89 investigator employed by a public utility or railroad to
90 investigate the theft of public utility or railroad property may
91 accompany a law-enforcement officer upon the premises of
92 a purchaser in the execution of a valid warrant or assist law
93 enforcement in the review of records required to be retained
94 pursuant to this section.

95 (i) Upon the entry of a final determination and order by
96 a court of competent jurisdiction, scrap metal found to have
97 been misappropriated, stolen or taken under false pretenses
98 may be returned to the proper owner of such material.

99 (j) Nothing in this section applies to scrap purchases by
100 manufacturing facilities that melt, or otherwise alter the form
101 of scrap metal and transform it into a new product or to the
102 purchase or transportation of food and beverage containers or
103 other nonindustrial materials having a marginal value per
104 individual unit.

105 (k) Nothing in this section applies to a purchaser of a
106 vehicle on which a catalytic converter is installed, a
107 purchaser of a catalytic converter intended for installation on
108 a vehicle owned or leased by the purchaser, or any person
109 who purchases, other than for purposes of resale, a catalytic
110 converter or a motor vehicle on which a catalytic converter
111 is installed, for personal, family, household, or business use.

112 (l) Any person who knowingly or with fraudulent intent
113 violates any provision of this section, including the knowing
114 failure to make a report or the knowing falsification of any
115 required information, is guilty of a misdemeanor and, upon

116 conviction of a first offense thereof, shall be fined not less
117 than one thousand dollars nor more than three thousand
118 dollars; upon conviction of a second offense thereof, shall be
119 fined not less than two thousand dollars and not more than
120 four thousand dollars and, notwithstanding the provisions of
121 section five, article twelve, chapter eleven of this code, the
122 court in which the conviction occurred shall issue an order
123 directing the Tax Commissioner to suspend for a period of
124 six months any business registration certificate held by that
125 person; and upon conviction of a third or subsequent offense
126 thereof shall be fined not less than three thousand dollars and
127 not more than five thousand dollars and, notwithstanding the
128 provisions of section five, article twelve, chapter eleven of
129 this code, the court in which the conviction occurred shall
130 issue an order directing the Tax Commissioner to cancel any
131 business registration certificate held by that person and state
132 the date said cancellation shall take effect.

CHAPTER 18

**(H.B. 218- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 25, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-14C-48, all relating to establishing the average wholesale price of motor fuel for the two thousand nine calendar year for purposes of calculating the rate of Motor Fuel Excise Tax; creating the Motor Fuel Excise Tax Shortfall Reserve Fund; providing for the transfer of

moneys from the Motor Fuel Excise Tax Shortfall Reserve Fund to the State Road Fund; providing for the termination of the reserve fund; and requiring the Commissioner of Highways to submit reports to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-14C-48, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

§11-14C-48. Motor Fuel Excise Tax Shortfall State Road fund support payment.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
 2 composed of a flat rate equal to twenty and one-half cents per
 3 invoiced gallon plus a variable component comprised of
 4 either the tax imposed by section eighteen-b, article fifteen of
 5 this chapter or the tax imposed under section thirteen-a,
 6 article fifteen-a of this chapter, as applicable: *Provided*, That
 7 the motor fuel excise tax shall take effect the first day of
 8 January, two thousand four: *Provided, however*, That on and
 9 after the first day of August, two thousand thirteen, the flat
 10 rate portion of the motor fuel excise tax shall be fifteen and
 11 one-half cents per gallon: *Provided further*, That the variable
 12 component shall be equal to five percent of the average
 13 wholesale price of the motor fuel: *And provided further*,
 14 That the average wholesale price shall be no less than ninety-
 15 seven cents per invoiced gallon and is computed as
 16 hereinafter prescribed in this section.

17 (b) *Determination of average wholesale price. --*

18 (1) To simplify determining the average wholesale price
19 of all motor fuel, the Tax Commissioner shall, effective with
20 the period beginning the first day of the month of the
21 effective date of the tax and each first day of January
22 thereafter, determine the average wholesale price of motor
23 fuel for each annual period on the basis of sales data gathered
24 for the preceding period of the first day of July through the
25 thirty-first day of October. Notification of the average
26 wholesale price of motor fuel shall be given by the Tax
27 Commissioner at least thirty days in advance of each first day
28 of January by filing notice of the average wholesale price in
29 the state register, and by any other means as the Tax
30 Commissioner considers reasonable.

31 (2) The "average wholesale price" means the single,
32 statewide average per gallon wholesale price, rounded to the
33 third decimal (thousandth of a cent), exclusive of state and
34 federal excise taxes on each gallon of motor fuel, as
35 determined by the Tax Commissioner from information
36 furnished by suppliers, importers and distributors of motor
37 fuel in this State, or other information regarding wholesale
38 selling prices as the Tax Commissioner may gather, or a
39 combination of information: *Provided*, That in no event shall
40 the average wholesale price be determined to be less than
41 ninety-seven cents per gallon of motor fuel: *Provided*,
42 *however*, That for calendar year two thousand nine, the
43 average wholesale price of motor fuel shall not exceed the
44 average wholesale price of motor fuel for calendar year two
45 thousand eight as determined pursuant to the notice filed by
46 the Tax Commissioner with the Secretary of State on the
47 twenty-first day of November, two thousand seven and
48 published in the state register on the thirtieth day of
49 November, two thousand seven.

50 (3) All actions of the Tax Commissioner in acquiring data
51 necessary to establish and determine the average wholesale
52 price of motor fuel, in providing notification of his or her
53 determination prior to the effective date of any change in

54 rate, and in establishing and determining the average
55 wholesale price of motor fuel, may be made by the Tax
56 Commissioner without compliance with the provisions of
57 article three, chapter twenty-nine-a of this code.

58 (4) In any administrative or court proceeding brought to
59 challenge the average wholesale price of motor fuel as
60 determined by the Tax Commissioner, his or her
61 determination is presumed to be correct and shall not be set
62 aside unless it is clearly erroneous.

63 (c) There is hereby levied a floorstocks tax on motor fuel
64 held in storage outside the bulk transfer/terminal system as of
65 the close of the business day preceding the first day of
66 January, two thousand four, and upon which the tax levied by
67 this section has not been paid. For the purposes of this
68 section, "close of the business day" means the time at which
69 the last transaction has occurred for that day. The floorstocks
70 tax is payable by the person in possession of the motor fuel
71 on the first day of January, two thousand four. The amount
72 of the floorstocks tax on motor fuel is equal to the sum of the
73 tax rate specified in subsection (a) of this section multiplied
74 by the gallons in storage as of the close of the business day
75 preceding the first day of January, two thousand four.

76 (1) Persons in possession of taxable motor fuel in storage
77 outside the bulk transfer/terminal system as of the close of
78 the business day preceding the first day of January, two
79 thousand four, shall:

80 (A) Take an inventory at the close of the business day
81 preceding the first day of January, two thousand four, to
82 determine the gallons in storage for purposes of determining
83 the floorstocks tax;

84 (B) Report no later than the thirty-first day of January,
85 two thousand four, the gallons on forms provided by the
86 commissioner; and

87 (C) Remit the tax levied under this section no later than
88 the first day of June, two thousand four.

89 (2) In the event the tax due is paid to the commissioner
90 on or before the thirty-first day of January, two thousand
91 four, the person remitting the tax may deduct from their
92 remittance five percent of the tax liability due.

93 (3) In the event the tax due is paid to the commissioner
94 after the first day of June, two thousand four, the person
95 remitting the tax shall pay, in addition to the tax, a penalty in
96 the amount of five percent of the tax liability due.

97 (4) In determining the amount of floorstocks tax due
98 under this section, the amount of motor fuel in dead storage
99 may be excluded. There are two methods for calculating the
100 amount of motor fuel in dead storage:

101 (A) If the tank has a capacity of less than ten thousand
102 gallons, the amount of motor fuel in dead storage is two
103 hundred gallons and if the tank has a capacity of ten thousand
104 gallons or more, the amount of motor fuel in dead storage is
105 four hundred gallons; or

106 (B) Use the manufacturer's conversion table for the tank
107 after measuring the number of inches between the bottom of
108 the tank and the bottom of the mouth of the drainpipe:
109 *Provided*, That the distance between the bottom of the tank
110 and the bottom of the mouth of the draw pipe is presumed to
111 be six inches.

112 (d) Every licensee who, on the effective date of any rate
113 change, has in inventory any motor fuel upon which the tax
114 or any portion thereof has been previously paid shall take a
115 physical inventory and file a report thereof with the
116 commissioner, in the format as required by the commissioner,
117 within thirty days after the effective date of the rate change,

118 and shall pay to the commissioner at the time of filing the
119 report any additional tax due under the increased rate.

§11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund support payment.

1 (a) There is hereby created in the State Treasury a special
2 fund to be known and designated as the "Motor Fuel Excise
3 Tax Shortfall Reserve Fund" to be administered by the Tax
4 Commissioner for the purposes provided by this section. The
5 fund shall consist of moneys transferred to the general
6 revenue fund pursuant to appropriation of the Legislature. At
7 the end of each fiscal year, during the fund's existence, the
8 moneys in the fund shall not expire to the general fund, but
9 shall remain available for expenditure during the ensuing
10 fiscal year. The fund shall terminate on the first day of
11 February, two thousand ten. Any moneys remaining in the
12 fund on that termination date shall be transferred to the
13 general revenue fund. No provision of this section may be
14 construed to require funding for the purposes of this section
15 in excess of amounts transferred to the fund pursuant to
16 appropriation of the Legislature.

17 (b) *Determination of motor fuel excise tax revenue*
18 *shortfall for the fiscal year ending the thirtieth day of June,*
19 *two thousand eight. --*

20 (1) *Shortfall for the fiscal year ending the thirtieth day of*
21 *June, two thousand eight. --* On the thirtieth day of June, two
22 thousand eight, or as soon thereafter as is practicable, the Tax
23 Commissioner shall determine the amount of the annual
24 motor fuel excise tax revenue shortfall that occurred for the
25 fiscal year ending on the thirtieth day of June, two thousand
26 eight.

27 (2) *Transfer for annual shortfall for the fiscal year*
28 *ending the thirtieth day of June, two thousand eight. --* On or
29 before the first day of August, two thousand eight, the Tax

30 Commissioner shall transfer moneys equal to the lesser of
31 twenty million dollars or the amount of the motor fuel excise
32 tax revenue shortfall that occurred for the fiscal year ending
33 on the thirtieth day of June, two thousand eight from the
34 Motor Fuel Excise Tax Shortfall Reserve Fund to the State
35 Road Fund.

36 (c) *Monthly shortfalls for the period of July, two*
37 *thousand eight to December, two thousand nine.* -- Beginning
38 on the thirty-first day of July, two thousand eight and on the
39 last day of each month thereafter until, and including, the
40 thirty-first day of December, two thousand nine, or as soon
41 after the last day of each month as is practicable, the Tax
42 Commissioner shall determine the amount of the monthly
43 motor fuel excise tax revenue shortfall that occurred for each
44 month. No such determination shall be made for any month
45 ending after the thirty-first day of December, two thousand
46 nine.

47 (1) *Transfer for monthly shortfall.* -- Within thirty days
48 after making the determination of the monthly motor fuel
49 excise tax revenue shortfall that occurred for each month, the
50 Tax Commissioner shall transfer moneys in an amount equal
51 to the amount of the motor fuel excise tax revenue shortfall
52 that occurred for each month from the Motor Fuel Excise Tax
53 Shortfall Reserve Fund to the State Road Fund: *Provided,*
54 *That the total amount of moneys transferred from the Motor*
55 *Fuel Excise Tax Shortfall Reserve Fund to the State Road*
56 *Fund in the fiscal year ending on the thirtieth day of June,*
57 *two thousand nine through total aggregate monthly transfers*
58 *shall not exceed the lesser of twenty million dollars or the*
59 *balance remaining in the Motor Fuel Excise Tax Shortfall*
60 *Reserve Fund. No such transfer shall be made that is*
61 *attributable to any month beginning after the thirty-first day*
62 *of December, two thousand nine: *Provided, however,* That*
63 *transfers attributable to the reconciliation for the period*
64 *beginning the first day of July, two thousand nine to the*

65 thirty-first day of December, two thousand nine mandated by
66 paragraph (3) of this subsection shall be made, if required.

67 (2) *Annual reconciliation.* — On the thirtieth day of June,
68 two thousand nine, or as soon thereafter as is practicable, the
69 Tax Commissioner shall determine the amount of the annual
70 motor fuel excise tax revenue shortfall that occurred for the
71 fiscal year ending on the thirtieth day of June, two thousand
72 nine.

73 (A) *Transfer for annual reconciliation for the fiscal year*
74 *ending on the thirtieth day of June, two thousand nine.* — The
75 amount of the annual motor fuel excise tax revenue shortfall
76 that occurred for the fiscal year ending on the thirtieth day of
77 June, two thousand nine shall be compared to the total
78 amount of moneys transferred from the Motor Fuel Excise
79 Tax Shortfall Reserve Fund to the State Road Fund over the
80 same fiscal year through total aggregate monthly transfers.
81 The resulting difference is the reconciliation amount.

82 (B) *Net Shortfall.* -- If the total amount of moneys
83 transferred from the Motor Fuel Excise Tax Shortfall Reserve
84 Fund to the State Road Fund for the fiscal year ending on the
85 thirtieth day of June, two thousand nine through total
86 aggregate monthly transfers is less than the amount of the
87 annual motor fuel excise tax revenue shortfall that occurred
88 over the same fiscal year, then on or before the first day of
89 August, two thousand nine, an amount of money equal to the
90 reconciliation amount shall be transferred by the Tax
91 Commissioner from the Motor Fuel Excise Tax Shortfall
92 Reserve Fund to the State Road Fund: *Provided,* That the
93 sum of the reconciliation amount subject to transfer and the
94 total amount of moneys transferred from the Motor Fuel
95 Excise Tax Shortfall Reserve Fund to the State Road Fund in
96 the fiscal year ending on the thirtieth day of June, two
97 thousand nine through total aggregate monthly transfers shall
98 not exceed the lesser of twenty million dollars or the amount
99 remaining in the Motor Fuel Excise Tax Shortfall Reserve
100 Fund.

101 (C) *Net Overage.* -- If the total amount of moneys
102 transferred from the Motor Fuel Excise Tax Shortfall Reserve
103 Fund to the State Road Fund for the fiscal year ending on the
104 thirtieth day of June, two thousand nine through total
105 aggregate monthly transfers is greater than the amount of the
106 annual motor fuel excise tax revenue shortfall that occurred
107 over the same annual period, then moneys equal to the
108 reconciliation amount shall be offset against amounts that
109 would have otherwise been transferred by the Tax
110 Commissioner from the Motor Fuel Excise Tax Shortfall
111 Reserve Fund to the State Road Fund under this section in the
112 next succeeding fiscal year beginning on the first day of July,
113 two thousand nine, and moneys transferred in the fiscal year
114 beginning on the first day of July, two thousand nine
115 accordingly decrease.

116 (3) *Transfer for reconciliation for the period beginning*
117 *the first day of July, two thousand nine to the thirty-first day*
118 *of December, two thousand nine.* -- The amount of the
119 annual motor fuel excise tax revenue shortfall that occurred
120 for the period beginning on the first day of July, two
121 thousand nine through the thirty-first day of December, two
122 thousand nine shall be compared to the total amount of
123 moneys transferred from the Motor Fuel Excise Tax Shortfall
124 Reserve Fund to the State Road Fund over the same period
125 through total aggregate monthly transfers. The resulting
126 difference is the reconciliation amount for the period
127 beginning the first day of July, two thousand nine to the
128 thirty-first day of December, two thousand nine.

129 (A) *Net Shortfall.* -- If the total amount of moneys
130 transferred from the Motor Fuel Excise Tax Shortfall Reserve
131 Fund to the State Road Fund for the period beginning on the
132 first day of July, two thousand nine through the thirty-first
133 day of December, two thousand nine through total aggregate
134 monthly transfers is less than the amount of the motor fuel
135 excise tax revenue shortfall that occurred over the same
136 period, then on or before the first day of February, two

137 thousand ten, moneys equal to the reconciliation amount for
138 the period beginning the first day of July, two thousand nine
139 to the thirty-first day of December, two thousand nine shall
140 be transferred by the Tax Commissioner from the Motor Fuel
141 Excise Tax Shortfall Reserve Fund to the State Road Fund:
142 *Provided*, That the sum of the reconciliation amount subject
143 to transfer and the total amount of moneys transferred from
144 the Motor Fuel Excise Tax Shortfall Reserve Fund to the
145 State Road Fund in the period beginning on the first day of
146 July, two thousand nine through the thirty-first day of
147 December, two thousand nine through total aggregate
148 monthly transfers shall not exceed the lesser of twenty
149 million dollars or the amount remaining in the Motor Fuel
150 Excise Tax Shortfall Reserve Fund.

151 (B) *Net Overage*. -- If the total amount of moneys
152 transferred from the Motor Fuel Excise Tax Shortfall Reserve
153 Fund to the State Road Fund for the period beginning on the
154 first day of July, two thousand nine through the thirty-first
155 day of December, two thousand nine through total aggregate
156 monthly transfers is greater than the amount of the annual
157 motor fuel excise tax revenue shortfall that occurred over the
158 same period, then moneys equal to the reconciliation amount
159 for the period beginning the first day of July, two thousand
160 nine to the thirty-first day of December, two thousand nine
161 shall remain in the State Road Fund for expenditure as
162 provided by law.

163 (d) *Definitions*. --

164 (1) "Calendar year" means the year beginning on the first
165 day of January, and ending on the thirty-first day of
166 December.

167 (2) "Motor fuel excise tax revenue shortfall" means the
168 official West Virginia state revenue estimate for motor fuel
169 excise tax revenues for a designated period minus the amount
170 of motor fuel excise tax collected for the same period:

171 *Provided*, That if the motor fuel excise tax collected for the
172 designated period is greater than the official West Virginia
173 state revenue estimate for motor fuel excise tax revenues for
174 the same period, the motor fuel excise tax revenue shortfall
175 is zero for the period.

176 (e) *Reporting*. -- The Commissioner of Highways shall
177 submit a report to the Joint Committee on Government and
178 Finance not later than the last day of each month for the
179 period of July, two thousand eight through December, two
180 thousand nine providing an analysis of the financial status of
181 the State Road Fund and funds for highway maintenance.

CHAPTER 19

**(H.B. 210- By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed June 26, 2008; in effect from passage.]
[Approved by the Governor on July 9, 2008.]

AN ACT to amend and reenact §18-7B-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-7D-2, §18-7D-5, §18-7D-6, §18-7D-7 and §18-7D-9 of said code; and to amend said code by adding thereto a new section, designated §18-7D-12, all relating to the voluntary transfer of assets from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System generally; providing option for certain rehired persons; providing a date for the transfer of assets of certain transferring members; providing a deadline for the payment required to receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System; establishing deadline for

providing notice of intent to retire for certain transferring members; providing that certain submissions of elections to transfer shall be counted; providing option to certain members misidentified; establishing requirements for repurchase of certain service in the State Teachers Retirement System by transferring members against whom a qualified domestic relations order has been entered; and clarifying that any transferring member shall be fully credited for the member's years of service in the Teachers' Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7B-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-7D-2, §18-7D-5, §18-7D-6, §18-7D-7 and §18-7D-9 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-7D-12, all to read as follows:

Article

7B. Teachers' Defined Contribution Retirement System.

7D. Voluntary Transfer from Teachers' Defined Contribution Retirement System to State Teachers Retirement System.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

1 The retirement system created and established in this
 2 article shall be closed and no new members accepted in the
 3 system after the thirtieth day of June, two thousand five.
 4 Notwithstanding the provisions of sections seven and eight of
 5 this article, all persons who are regularly employed for full-
 6 time service as a member or an employee whose initial
 7 employment commences after the thirtieth day of June, two
 8 thousand five, shall become a member of the State Teachers'

9 Retirement System created and established in article seven-a
10 of this chapter: *Provided*, That any person rehired after the
11 thirtieth day of June, two thousand five, shall become a
12 member of the Teachers' Defined Contribution Retirement
13 System created and established in this article, or of the
14 Teachers Retirement System created and established in
15 article seven-a of this chapter, depending upon which system
16 he or she last contributed to while he or she was employed
17 with an employer mandating membership and contributions
18 to one of those plans: *Provided, however*, That a rehired
19 person who thereby becomes a member of the Teachers'
20 Defined Contribution Retirement System may become a
21 member of the Teachers Retirement System within the
22 applicable time periods and upon meeting the requirements
23 provided in article seven-d of this chapter: *Provided further*,
24 That any person rehired after the thirty-first day of
25 December, two thousand seven, who did not have at least one
26 dollar in the Teachers Defined Contribution Retirement
27 System on the thirty-first day of December, two thousand
28 seven, and for whom the Teachers Defined Contribution
29 Retirement System was the system to which he or she last
30 contributed while employed by an employer who required
31 membership and contributions to one of the two teachers
32 retirement plans, shall, within ten days of returning to
33 employment, affirmatively choose to reenter the Teachers
34 Defined Contribution Retirement System or to become a
35 contributing member of the Teachers Retirement System.
36 Those rehired prior to the first day of July, two thousand
37 eight, and who did not have at least one dollar in the
38 Teachers Defined Contribution Retirement System on the
39 thirty-first day of December, two thousand seven, as
40 determined by the Consolidated Public Retirement Board,
41 shall be permitted to voluntarily elect to transfer effective the
42 first day of August, two thousand eight, upon written request
43 to the Consolidated Public Retirement Board received no
44 later than the fifteenth day of July, two thousand eight.

**ARTICLE 7D. VOLUNTARY TRANSFER FROM
TEACHERS' DEFINED
CONTRIBUTION RETIREMENT
SYSTEM TO STATE TEACHERS
RETIREMENT SYSTEM.**

§18-7D-2. Definitions.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

§18-7D-6. Service credit in State Teachers Retirement system following transfer; conversion of assets; adjustments.

§18-7D-7. Period for affirmative election to transfer; board may contract for professional services.

§18-7D-9. Qualified domestic relations orders.

§18-7D-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Actively contributing member of the Teachers'
4 Defined Contribution Retirement System" means a member
5 of that retirement system who was actively contributing to
6 the Teachers' Defined Contribution Retirement System on
7 the thirty-first day of December, two thousand seven.

8 (2) "Actuarial Reserve" means the Actuarial Reserve
9 Lump Sum Value of the additional service credit being
10 purchased by a member so electing in accordance with the
11 provisions of section six of this article.

12 (3) "Actuarial Reserve Adjusted Salary" means either:

13 (A) For a member with a full year service credit in the
14 fiscal year ending the thirtieth day of June, two thousand
15 seven, the member's two thousand seven fiscal year salary
16 increased by seven percent;

17 (B) For a member with less than a full year service credit
18 in the fiscal year ending the thirtieth day of June, two

19 thousand seven, the member's two thousand seven fiscal year
20 salary annualized to a full year based on the partial year
21 service credit increased by seven percent; or

22 (C) For a member without service credit in the fiscal year
23 ending the thirtieth day of June, two thousand seven, the
24 member's annualized contract salary in effect on the thirty-
25 first day of December, two thousand seven increased by
26 seven percent, or the member's annual contract salary on the
27 date of rehire if after the thirty-first day of December, two
28 thousand seven.

29 (4) "Actuarial Reserve Benefit Date" means the first day
30 of the month coincident with or next following the date at
31 which the member attains the age of sixty, or the thirtieth day
32 of June, two thousand nine, whichever is later.

33 (5) "Actuarial Reserve Benefit Date Factors" mean the
34 actuarial lump sum value factors based on a life only annuity
35 starting on the Actuarial Reserve Benefit Date applying the
36 1983 Group Annuity Mortality Tables on a seventy-five
37 percent female and a twenty-five percent male blended
38 Unisex basis and interest at seven and one-half percent.

39 (6) "Actuarial Reserve Discount Factor" means the
40 annual discount factor applied for the period between the
41 thirtieth day of June, two thousand nine and the Actuarial
42 Reserve Benefit Date, if any. Such factor based on the State
43 Teachers Retirement System actuarial valuation assumptions
44 shall estimate the impact of mortality, disability, and
45 economic factors for such discount period by application of
46 a net four percent discount rate.

47 (7) "Actuarial Reserve Lump Sum Value" means a single
48 sum amount calculated as: A benefit of two percent
49 multiplied by the Defined Contribution Retirement System
50 service credit being purchased multiplied by the Actuarial
51 Reserve Adjusted Salary; such benefit multiplied by the

52 Actuarial Reserve Benefit Date Factors to determine the lump
53 sum value multiplied by the Actuarial Reserve Discount
54 Factor.

55 (8) "Affirmatively elect to transfer" means the voluntary
56 execution and delivery to the Consolidated Public Retirement
57 Board, by a member of the Teachers' Defined Contribution
58 Retirement System of a document in a form prescribed by the
59 board that irrevocably authorizes the board to transfer the
60 member and all the member's assets in the Teachers' Defined
61 Contribution Retirement System to the State Teachers
62 Retirement System: *Provided*, That delivery of the document
63 to the Consolidated Public Retirement Board may be
64 accomplished through submission of the document to the
65 supervisor of a work site pursuant to section seven of this
66 article: *Provided, however*, That any previous member of the
67 state Teachers Retirement System who voluntarily elected to
68 terminate his or her membership in the State Teachers
69 Retirement System to become a member of the Teachers'
70 Defined Contribution Retirement System and signed an
71 irrevocable transfer request also may affirmatively elect to
72 transfer notwithstanding the prior transfer request.

73 (9) "Assets" means all member contributions and
74 employer contributions made on the member's behalf to the
75 Defined Contribution Retirement System and earnings
76 thereon, less any applicable fees as approved by the board:
77 *Provided*, That if a member has withdrawn or cashed out any
78 amounts, the amounts must have been repaid.

79 (10) "Board" means the Consolidated Public Retirement
80 Board established in article ten-d, chapter five of this code,
81 and its employees.

82 (11) "Date of transfer" means, in the event that sixty-five
83 percent or more of the actively contributing members of the
84 Defined Contribution Retirement System affirmatively elect
85 to transfer to the State Teachers Retirement System within

86 the period provided in section seven of this article, the first
87 day of July, two thousand eight: *Provided*, That for any
88 member whose election to transfer was received by the board
89 after the twelfth day of May, two thousand eight, but on or
90 before the twentieth day of May, two thousand eight, and has
91 not been certified as accepted by the board on or before the
92 effective date of the amendments to this section enacted
93 during the second extraordinary session of the Legislature,
94 two thousand eight, "date of transfer" means the first day of
95 August, two thousand eight.

96 (12) "Defined Contribution Retirement System" means
97 the Teachers' Defined Contribution Retirement System
98 established in article seven-b of this chapter.

99 (13) "Member" means any person who has an account
100 balance standing to his or her credit in the Teachers' Defined
101 Contribution Retirement System.

102 (14) "Salary" means:

103 (A) For a member contributing to the Defined
104 Contribution Retirement System during the two thousand
105 seven fiscal year, the actual salary earned for the two
106 thousand seven fiscal year divided by the employment
107 service earned in the two thousand seven fiscal year.

108 (B) For a member not contributing to the Defined
109 Contribution Retirement System during the two thousand
110 seven fiscal year, the contract salary on the date of rehire.

111 (15) "State Teachers Retirement System" means the State
112 Teachers Retirement System established in article seven-a of
113 this chapter.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

1 (a) If at least sixty-five percent of actively contributing
2 members of the Teachers' Defined Contribution Retirement
3 System affirmatively elect to transfer to the State Teachers
4 Retirement System within the period provided in section
5 seven of this article, then the Consolidated Public Retirement
6 Board shall transfer the members and all properties held in
7 the Teachers' Defined Contribution Retirement System's
8 Trust Fund in trust for those members who affirmatively
9 elected to do so during that period to the State Teachers
10 Retirement System, effective on the first day of July, two
11 thousand eight: *Provided*, That the board shall, for any
12 member whose election to transfer was received by the board
13 after the twelfth day of May, two thousand eight, but on or
14 before the twentieth day of May, two thousand eight, and has
15 not been certified as accepted by the board on or before the
16 effective date of the amendments to this section enacted
17 during the second extraordinary session of the Legislature,
18 two thousand eight, effectuate the transfer as provided in this
19 subsection on the first day of August, two thousand eight.

20 (b) The board shall make available to each member a loan
21 for the purpose of paying all or part of the Actuarial Reserve,
22 or if available in accordance with the provisions of
23 subsection (d), section six of this article, the one and one-half
24 percent contribution for service in the Teachers' Defined
25 Contribution System to receive additional service credit in
26 the State Teachers Retirement System for service in the
27 Teachers' Defined Contribution Retirement System pursuant
28 to section six of this article. The loan shall be offered in
29 accordance with the provisions of section thirty-four, article
30 seven-a of this chapter.

31 (1) Notwithstanding any provision of this code, rule or
32 policy of the board to the contrary, the interest rate on any
33 loan may not exceed seven and one-half percent per annum.
34 The total amount borrowed may not exceed forty thousand
35 dollars: *Provided*, That the loan may not exceed the
36 limitations of the Internal Revenue Code Section 72 (p).

37 (2) In the event a loan made pursuant to this section is
38 used to pay the Actuarial Reserve or the one and one-half
39 percent contribution, as the case may be, the board shall
40 make any necessary adjustments at the time the loan is made.

41 (3) The board shall make this loan available until the
42 thirtieth day of June, two thousand nine.

43 (c) The board shall develop and institute a payroll
44 deduction program for repayment of the loan established in
45 this section.

46 (d) If at least sixty-five percent of actively contributing
47 members of the Teachers' Defined Contribution Retirement
48 System affirmatively elect to transfer to the State Teachers
49 Retirement System within the period provided in section
50 seven of this article:

51 (1) As of the first day of July, two thousand eight, or the
52 first day of August, two thousand eight, as the case may be,
53 the transferred members' contribution rate becomes six
54 percent of his or her salary or wages; and

55 (2) All transferred members who work one hour or more
56 and who make a contribution into the State Teachers
57 Retirement System on or after the first day of July, two
58 thousand eight, are governed by the provisions of article
59 seven-a of this chapter, subject to the provisions of this
60 article.

61 (e) Subject to the provisions of subdivision (1) of this
62 subsection, if a member has withdrawn or cashed out part of
63 his or her assets, that member will not receive credit for those
64 moneys cashed out or withdrawn. The board shall make a
65 determination as to the amount of credit a member loses
66 based on the periods of time and the amounts he or she has
67 withdrawn or cashed out, which shall be expressed as a loss
68 of service credit.

69 (1) A member may repay those amounts he or she
70 previously cashed out or withdrew, along with interest as
71 determined by the board, and receive the same credit as if the
72 withdrawal or cash-out never occurred. To receive full credit
73 for the cashed-out or withdrawn amounts being repaid to the
74 State Teachers Retirement System, the member also shall pay
75 the actuarial reserve, or the one and one-half percent
76 contribution, as the case may be, pursuant to section six of
77 this article.

78 (2) The loan provided in this section is not available to
79 members to repay previously cashed out or withdrawn
80 moneys.

81 (3) If the repayment occurs five or more years following
82 the cash-out or withdrawal, the member also shall repay any
83 forfeited employer contribution account balance along with
84 interest determined by the board.

85 (f) Notwithstanding any provision of subsection (e) to the
86 contrary, if a member has cashed out or withdrawn any of his
87 or her assets after the last day of June, two thousand three,
88 and that member chooses to repurchase that service after the
89 thirtieth day of June, two thousand eight, the member shall
90 repay the previously distributed amounts and any applicable
91 interest to the State Teachers Retirement System.

92 (g) Any service in the State Teachers Retirement System
93 a member has before the date of the transfer is not affected by
94 the provisions of this article.

95 (h) The board shall take all necessary steps to see that the
96 voluntary transfers of persons and assets authorized by this
97 article do not affect the qualified status with the Internal
98 Revenue Service of either retirement plan.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

1 (a) Any member who has affirmatively elected to transfer
2 to the State Teachers Retirement System within the period
3 provided in section seven of this article whose assets have
4 been transferred from the Teachers' Defined Contribution
5 Retirement System to the State Teachers Retirement System
6 pursuant to the provisions of this article and who has not
7 made any withdrawals or cash-outs from his or her assets is,
8 depending upon the percentage of actively contributing
9 members affirmatively electing to transfer, entitled to service
10 credit in the State Teachers Retirement System in accordance
11 with the provisions of subsections (c) or (d) of this section.

12 (b) Any such member who has made withdrawals or
13 cash-outs will receive service credit based upon the amounts
14 transferred. The board shall make the appropriate adjustment
15 to the service credit the member will receive.

16 (c) If at least sixty-five percent but less than seventy-five
17 percent of actively contributing members of the Teachers'
18 Defined Contribution Retirement System affirmatively elect
19 to transfer to the State Teachers Retirement System within
20 the period provided in section seven of this article, for any
21 member of the Defined Contribution Retirement System who
22 elects to transfer to the State Teachers Retirement System, his
23 or her service credit in the State Teachers Retirement System
24 is determined as follows:

25 (1) For any member affirmatively electing to transfer, the
26 member's State Teachers Retirement System credit shall be
27 seventy-five percent of the member's Teachers' Defined
28 Contribution Retirement System service credit, less any
29 service previously withdrawn by the member or due to a
30 qualified domestic relations order and not repaid;

31 (2) To receive full credit in the State Teachers Retirement
32 System for service in the Teachers' Defined Contribution
33 Retirement System for which assets are transferred,
34 transferring members shall have the option to pay into the
35 State Teachers Retirement System the Actuarial Reserve, as
36 defined in section two of this article, by no later than the
37 thirtieth day of June, two thousand nine.

38 (d) If at least seventy-five percent of actively contributing
39 members of the Teachers' Defined Contribution Retirement
40 System affirmatively elect to transfer to the State Teachers
41 Retirement System within the period provided in section
42 seven of this article, for any member of the Defined
43 Contribution Retirement System who elects to transfer to the
44 State Teachers Retirement System, his or her service credit
45 in the State Teachers Retirement System is determined as
46 follows:

47 (1) For any member affirmatively electing to transfer, the
48 member's State Teachers Retirement System credit shall be
49 seventy-five percent of the member's Teachers' Defined
50 Contribution Retirement System service credit, less any
51 service previously withdrawn by the member or due to a
52 qualified domestic relations order and not repaid;

53 (2) To receive full credit in the State Teachers Retirement
54 System for service in the Teachers' Defined Contribution
55 Retirement System for which assets are transferred, members
56 who affirmatively elected to transfer shall pay into the State
57 Teachers Retirement System a one and one-half percent
58 contribution by no later than the thirtieth day of June, two
59 thousand nine. This contribution shall be calculated as one
60 and one-half percent of the member's estimated total earnings
61 for which assets are transferred, plus interest of four percent
62 per annum accumulated from the date of the member's initial
63 participation in the Defined Contribution Retirement System.

64 (A) For a member contributing to the Defined
65 Contribution Retirement System at any time during the two
66 thousand eight fiscal year and commencing membership in
67 the State Teachers Retirement System on the first day of July,
68 two thousand eight, or the first day of August, two thousand
69 eight, as the case may be:

70 (i) The estimated total earnings shall be calculated based
71 on the member's salary and the member's age nearest birthday
72 on the thirtieth day of June, two thousand eight;

73 (ii) This calculation shall apply both an annual backward
74 salary scale from that date for prior years' salaries and a
75 forward salary scale for the salary for the two thousand eight
76 fiscal year.

77 (B) The calculations in paragraph (A) of this subdivision
78 are based upon the salary scale assumption applied in the
79 West Virginia Teachers Retirement System Actuarial
80 Valuation as of the first day of July, two thousand seven,
81 prepared for the Consolidated Public Retirement Board. This
82 salary scale shall be applied regardless of breaks in service.

83 (e) All service previously transferred from the State
84 Teachers Retirement System to the Teachers' Defined
85 Contribution Retirement System is considered Teachers'
86 Defined Contribution Retirement System service for the
87 purposes of this article.

88 (f) Notwithstanding any provision of this code to the
89 contrary, the retirement of a member who becomes eligible
90 to retire after the member's assets are transferred to the State
91 Teachers Retirement System pursuant to the provisions of
92 this article may not commence prior to the first day of
93 September, two thousand eight: *Provided*, That the
94 Consolidated Public Retirement Board may not retire any
95 member who is eligible to retire during the calendar year two
96 thousand eight during the calendar year two thousand eight

97 unless the member has provided a written notice to his or her
98 county board of education by the first day of July, two
99 thousand eight, of his or her intent to retire.

**§18-7D-7. Period for affirmative election to transfer; board
may contract for professional services.**

1 (a) The board shall provide the members of the Teachers'
2 Defined Contribution Retirement System an opportunity to
3 voluntarily execute and deliver to the Consolidated Public
4 Retirement Board, or its designee, a written document in a
5 form prescribed by the board that irrevocably authorizes the
6 board to transfer the member and all the member's assets in
7 the Teachers' Defined Contribution Retirement System to the
8 State Teachers Retirement System in accordance with the
9 provisions of this article.

10 (b) If at least sixty-five percent of actively contributing
11 members of the Teachers' Defined Contribution Retirement
12 System affirmatively elect to transfer to the State Teachers
13 Retirement System:

14 (1) The Consolidated Public Retirement Board shall, for
15 each member who affirmatively elected to transfer as
16 provided in this section, transfer the assets held in the
17 Teachers' Defined Contribution Retirement System's Trust
18 Fund in trust for that member to the State Teachers
19 Retirement System on the first day of July, two thousand
20 eight: *Provided*, That the board shall, for each member
21 whose election to transfer was received by the board after the
22 twelfth day of May, two thousand eight, but on or before the
23 twentieth day of May, two thousand eight, and has not been
24 certified as accepted by the board on or before the effective
25 date of the amendments to this section enacted during the
26 second extraordinary session of the Legislature, two thousand
27 eight, transfer the assets of such member as provided in this
28 subdivision on the first day of August, two thousand eight;

29 (2) On the first day of July, two thousand eight, or the
30 first day of August, two thousand eight, as the case may be,
31 each member who so elected becomes a member of the State
32 Teachers Retirement System and after working one or more
33 hours and contributing to the State Teachers Retirement
34 System is entitled to the benefits of the State Teachers
35 Retirement System; and

36 (3) Each such member is governed by the provisions of
37 the State Teachers Retirement System subject to the
38 provisions of this article.

39 (c) If fewer than sixty-five percent of actively
40 contributing members of the Teachers' Defined Contribution
41 Retirement System affirmatively elect to transfer to the State
42 Teachers Retirement System, the transfers described in this
43 section shall not occur.

44 (d) Any person who has one dollar or more in assets in
45 the Teachers' Defined Contribution Retirement System on the
46 last day of December, two thousand seven, may and is
47 eligible to affirmatively elect to transfer to the State Teachers
48 Retirement System as provided in this section. For purposes
49 of this article:

50 (1) The tabulation of the percentage required for transfer
51 as required in this article shall only include documents
52 affirmatively electing to transfer submitted under the
53 provisions of this subsection by those who are actively
54 contributing members of the Teachers' Defined Contribution
55 Retirement System as that term is defined in section two of
56 this article; and

57 (2) Notwithstanding the opportunity to submit documents
58 affirmatively electing to transfer extended by this article to
59 members other than those who are actively contributing
60 members of the Teachers' Defined Contribution Retirement
61 System, there shall be no duty or other obligation on the part

62 of the board to provide any education, information or notice
63 regarding matters contained in this article to members who
64 are not actively contributing members of the Teachers'
65 Defined Contribution Retirement System regarding any
66 matter described in this article, nor any right on the part of
67 those other members to receive the same.

68 (e) Notwithstanding any other provision of this code to
69 the contrary, the board may do all things necessary and
70 convenient to maintain the Teachers' Defined Contribution
71 Retirement System and the State Teachers Retirement System
72 during the transitional period and may retain the services of
73 the professionals it considers necessary to do so. The board
74 may also retain the services of professionals necessary to:

75 (1) Assist in the preparation of educational materials;

76 (2) Assist in the educational process;

77 (3) Assist in the process for submission of the documents
78 whereby members may affirmatively elect to transfer; and

79 (4) Ensure compliance with all relevant state and federal
80 laws.

81 (f) Due to the time constraints inherent in the initial
82 processes established for the submission of documents
83 affirmatively electing to transfer set forth in this article in
84 specific, and due to the nature of the professional services
85 required by the Consolidated Public Retirement Board in
86 general, the provisions of article three, chapter five-a of this
87 code, do not apply to any materials, contracts for any
88 actuarial services, investment services, legal services or other
89 professional services authorized under the provisions of this
90 article and the provisions of article six, chapter twenty-nine
91 do not apply to any employment of or contracting for
92 personnel by the board for the purposes of implementing the
93 provisions of this article.

94 (g) The submission of the documents whereby members
95 may affirmatively elect to transfer may be held through any
96 method the board determines is in the best interest of the
97 members: *Provided*, That for members of the Teachers'
98 Defined Contribution Retirement System, the submission of
99 the documents whereby those members elect to transfer shall
100 be pursuant to the procedure established by the Consolidated
101 Public Retirement Board set forth in subsection (j) of this
102 section.

103 (h) The period for submission of the documents whereby
104 members may affirmatively elect to transfer shall begin not
105 later than the first day of April, two thousand eight. The
106 board shall ascertain the results of the submissions not later
107 than the last day of May, two thousand eight. The board shall
108 certify the results of the submissions to the Governor, the
109 Legislature and the members not later than the fifth day of
110 June, two thousand eight.

111 (i) The submission period terminates and elections to
112 transfer may not be accepted from a member after the twelfth
113 day of May, two thousand eight, subject to the following:

114 (1) If elections to transfer are permitted through the mail,
115 any submission postmarked later than the twelfth day of May,
116 two thousand eight, is void and may not be counted:
117 *Provided*, That notwithstanding the provisions of this
118 subdivision, any submission received by the board on or
119 before the twentieth day of May, two thousand eight shall be
120 counted;

121 (2) If elections to transfer are delivered to a supervisor on
122 selection day or on or before the ninth day of May, two
123 thousand eight, any submission postmarked or deposited with
124 a commercial carrier later than the thirteenth day of May, two
125 thousand eight, is void and may not be counted: *Provided*,
126 That notwithstanding the provisions of this subdivision, any
127 submission received by the board on or before the twentieth

128 day of May, two thousand eight shall be counted: *Provided,*
129 *however,* That delivery by mail must be by certified mail,
130 return receipt requested or delivery by commercial courier
131 that requires written confirmation by the board of delivery;

132 (3) The fifth day of May, two thousand eight, is selection
133 day upon which each county board and superintendent shall
134 provide an opportunity in each school within the county for
135 members of the Teachers' Defined Contribution System to
136 affirmatively elect to transfer.

137 (j) The Consolidated Public Retirement Board shall
138 collaborate with the state superintendent, the Chancellor for
139 Higher Education and the Chancellor for Community and
140 Technical College Education to establish a procedure
141 whereby all actively contributing members of the Teachers'
142 Defined Contribution Retirement System may deliver to the
143 Consolidated Public Retirement Board or its designee the
144 written document authorizing transfer through a supervisor
145 at each work site where any contributing member of the
146 Defined Contribution Retirement System is employed. The
147 procedure shall include at least the following:

148 (1) The supervisor at each work site is responsible for
149 collecting the written documents authorizing the transfer
150 from all actively contributing members of the Teachers'
151 Defined Contribution Retirement System employed at the
152 work site who choose to submit the written document. The
153 supervisor shall record the receipt of all written documents
154 authorizing transfer, shall direct the member submitting the
155 written document to initial a receipt log and shall issue a
156 receipt to the member submitting the written document.

157 (2) On and after the sixth day of May, two thousand
158 eight, but on or before the ninth day of May, two thousand
159 eight, the supervisor at the work site shall make reasonable
160 efforts to contact verbally and in writing all actively
161 contributing members of the Teachers' Defined Contribution

162 Retirement System employed at the work site that have not
163 submitted their written documents as of that date to remind
164 those members of the upcoming deadline for submitting their
165 written document authorizing transfer: *Provided*, That failure
166 of the supervisor to make contact with any of those members
167 shall not be a basis for a cause of action to allow a member
168 to transfer after the period provided in this section or for any
169 other cause of action.

170 (3) The supervisor at each work site shall forward all of
171 the written documents to the Consolidated Public Retirement
172 Board, or its designee, through certified mail, or delivery by
173 commercial courier that requires written confirmation by the
174 board of delivery, no later than the thirteenth day of May,
175 two thousand eight: *Provided*, That notwithstanding the
176 provisions of this subdivision, any submission received by
177 the board on or before the twentieth day of May, two
178 thousand eight, shall be counted. The work site supervisor
179 shall inform the Consolidated Public Retirement Board of all
180 of the written documents received each day so that the board,
181 or its designee, can record which members of the Teachers'
182 Defined Contribution Retirement System have submitted
183 their written documents authorizing transfer pursuant to
184 subsection (k) of this section.

185 (4) For the purposes of this subdivision, the principal of
186 a school with any of grades prekindergarten through twelve
187 is the work site supervisor. For the purposes of this
188 subdivision, for any work site under the jurisdiction of the
189 Higher Education Policy Commission or the West Virginia
190 Council for Community and Technical College Education,
191 the human resource administrator or other designee may be
192 considered the work site supervisor. In any case where the
193 person who is the work site supervisor is in question, the
194 state board, the Chancellor for Higher Education or the
195 Chancellor for Community and Technical College Education,
196 whichever entity has jurisdiction over the work site, shall
197 designate the supervisor.

198 (5) The state board, the Chancellor for Higher Education
199 and the Chancellor for Community and Technical College
200 Education shall ascertain the names of all work site
201 supervisors under their jurisdiction and transmit a list of the
202 names of the work site supervisors to the Consolidated Public
203 Retirement Board on or before the thirty-first day of March,
204 two thousand eight.

205 (k) The Consolidated Public Retirement Board, or its
206 designee, shall record the receipt of all written documents
207 authorizing the transfer so that it knows the percentage of
208 contributing members of the Teachers' Defined Contribution
209 Retirement System that have submitted the written
210 documents by work site and by county.

211 (l) Notwithstanding any other provision of this article to
212 the contrary, any member of the Teachers Defined
213 Contribution Retirement System who was erroneously
214 identified by the employer as being a member of the Teachers
215 Retirement System and who did not have at least one dollar
216 in the Teachers Defined Contribution Retirement System on
217 the thirty-first day of December, two thousand seven and
218 therefore was denied an opportunity to select transfer as
219 determined by the Consolidated Public Retirement Board,
220 shall be provided promptly with an opportunity to select
221 membership in the Teachers Retirement System. The
222 Consolidated Public Retirement Board is authorized to
223 establish procedures and time periods to provide notice,
224 education, selection opportunity and transfer for these
225 members to correct the erroneous assignment to the Teachers
226 Retirement System.

§18-7D-9. Qualified domestic relations orders.

1 Any transferring member having a qualified domestic
2 relations order against his or her defined contribution account
3 is allowed to repurchase service in the State Teachers
4 Retirement System. The member shall repay any moneys
5 previously distributed to the alternate payee along with the

6 interest as set by the board. To receive full credit for the
7 previous distribution to the alternate payee pursuant to a
8 qualified domestic relations order being repaid to the State
9 Teachers Retirement System, the member shall also pay the
10 Actuarial Reserve, or the one and one-half percent
11 contribution, as the case may be, pursuant to section six of
12 this article. The member shall repay by the last day of June,
13 two thousand fourteen. The provisions of this section are
14 void and of no effect if there is no transfer from the Teachers'
15 Defined Contribution Retirement System to the State
16 Teachers Retirement System. An alternate payee is not,
17 solely as a result of that status, a member of either the
18 Teachers' Defined Contribution Retirement System or the
19 State Teachers Retirement System for any purpose under the
20 provisions of this article and no interest held by the alternate
21 payee is transferred to the State Teachers Retirement System
22 pursuant thereto.

§18-7D-12. Transferees' eligibility to retire.

1 (a) For purposes of determining a transferring member's
2 eligibility for retirement in accordance with section twenty-
3 five, article seven-a of this chapter, any member who has
4 affirmatively elected to transfer to the State Teachers
5 Retirement System pursuant to the provisions of this article
6 shall be fully credited for his or her years of service in the
7 Teachers' Defined Contribution Retirement System:
8 *Provided*, That the calculation of any transferring member's
9 service credit in the State Teachers' Retirement System
10 following the transfer shall be determined in accordance with
11 the provisions of section six of this article.

12 (b) For purposes of this section, "years of service" shall
13 mean all years as a member of the Teachers' Defined
14 Contribution Retirement System and, in addition thereto,
15 credits for any prior service, if any: *Provided*, That service
16 previously withdrawn by a member may not be included in
17 "years of service" unless repaid.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2007

CHAPTER 1

**(H.B. 203 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed August 21, 2007; in effect ninety days from passage.]
[Approved by the Governor on September 5, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §48-28A-101, §48-28A-102, §48-28A-103, §48-28A-104, §48-28A-105, §48-28A-106, §48-28A-107, §48-28A-108, §48-28A-109 and §48-28A-110, all relating to the creation and implementation of the Address Confidentiality Program; providing for administration by the Secretary of State; providing address confidentiality for victims of domestic abuse, sexual assault or stalking; providing eligibility and application requirements for participation in program; requiring contents of an application be kept confidential; establishing a process for certification of applicants as program participants; providing for cancellation of a participant's certification; providing for use of a designated confidential address; allowing disclosure of actual residential or mailing address under certain circumstances; establishing criminal penalties for the filing of false information or breaching the program's confidentiality; limiting the Secretary of State's liability in certain circumstances; and requiring the Secretary of State propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §48-28A-101, §48-28A-102, §48-28A-103, §48-28A-104, §48-28A-105, §48-28A-106, §48-28A-107, §48-28A-108, §48-28A-109 and §48-28A-110, all to read as follows:

ARTICLE 28A. ADDRESS CONFIDENTIALITY PROGRAM.

§48-28A-101. Purpose.

§48-28A-102. Definitions.

§48-28A-103. Address Confidentiality Program.

§48-28A-104. Cancellation.

§48-28A-105. Use of designated address.

§48-28A-106. Disclosure to law enforcement and state agencies.

§48-28A-107. Disclosure pursuant to court order or canceled certification.

§48-28A-108. Confidentiality.

§48-28A-109. Secretary of State; liability.

§48-28A-110. Rules.

§48-28A-101. Purpose.

1 The Legislature finds that persons attempting to escape
2 from actual or threatened domestic violence, sexual assault,
3 or stalking frequently find it necessary to establish a new
4 address in order to prevent their assailants or probable
5 assailants from finding them. The purpose of this article is to
6 enable state and local agencies to respond to requests for
7 public records without disclosing the location of a victim of
8 domestic abuse, sexual assault, or stalking; to enable
9 interagency cooperation with the Secretary of State in
10 providing address confidentiality for victims of domestic
11 abuse, sexual assault, or stalking; and to enable state and
12 local agencies to accept an address designated by the
13 Secretary of State by a program participant as a substitute for
14 a residential or mailing address.

§48-28A-102. Definitions.

1 As used in this article, unless the context otherwise
2 indicates, the following terms have the following meanings.

3 (1) "Application assistant" means an employee of a state
4 or local agency, or of a nonprofit program that provides
5 counseling, referral, shelter or other specialized service to
6 victims of domestic abuse, rape, sexual assault or stalking,
7 and who has been designated by the respective agency or
8 nonprofit program, and trained, accepted and registered by
9 the Secretary of State to assist individuals in the completion
10 of program participation applications.

11 (2) "Designated address" means the address assigned to
12 a program participant by the Secretary of State pursuant to
13 section one hundred three of this article.

14 (3) "Mailing address" means an address that is recognized
15 for delivery by the United States Postal Service.

16 (4) "Program" means the Address Confidentiality
17 Program established by this article.

18 (5) "Program participant" means a person certified by the
19 Secretary of State to participate in the program.

20 (6) "Residential Address" means a residential street,
21 school or work address of an individual, as specified on the
22 individual's application to be a program participant under this
23 article.

§48-28A-103. Address Confidentiality Program.

1 (a) On or after the effective date of the enactment of this
2 article, the Secretary of State shall create an Address
3 Confidentiality Program to be staffed by full time employees
4 who have been subjected to a criminal history records search.

5 (b) Upon recommendation of an application assistant, an
6 adult person, a parent or guardian acting on behalf of a
7 minor, or a guardian acting on behalf of an incapacitated
8 person may apply to the Secretary of State to have a
9 designated address assigned by the Secretary of State.

10 (c) The Secretary of State may approve an application
11 only if it is filed with the office of the Secretary of State in
12 the manner established by rule and on a form prescribed by
13 the Secretary of State. A completed application must contain
14 the following information:

15 (1) The application preparation date, the applicant's
16 signature and the signature and registration number of the
17 application assistant who assisted the applicant in applying to
18 be a program participant;

19 (2) A designation of the Secretary of State as agent for
20 purposes of service of process and for receipt of certain first-
21 class mail;

22 (3) The mailing address where the applicant may be
23 contacted by the Secretary of State or a designee and the
24 telephone number or numbers where the applicant may be
25 contacted by the Secretary of State or the Secretary of State's
26 designee; and

27 (4) A residential or mailing address or both types of
28 addresses that the applicant requests not be disclosed for the
29 reason that disclosure will jeopardize the applicant's safety or
30 increase the risk of violence to the applicant or members of
31 the applicant's household.

32 (d) Upon receipt of a properly completed application, the
33 Secretary of State may certify the applicant as a program
34 participant. A program participant is certified for a period of
35 four years following the date of initial certification unless the
36 certification is withdrawn or invalidated before that date.
37 The Secretary of State shall send notification of a lapsing

38 certification and a reapplication form to a program participant
39 at least four weeks prior to the expiration of the program
40 participant's certification.

41 (e) The Secretary of State shall forward to the program
42 participant first-class mail received at the program
43 participant's designated address.

44 (f)(1) An applicant may not file an application knowing
45 that it:

46 (A) Contains false or incorrect information; or

47 (B) Falsely claims that disclosure of either the applicant's
48 residential or mailing address or both types of addresses
49 threatens the safety of the applicant or the applicant's children
50 or the minor or incapacitated person on whose behalf the
51 application is made.

52 (2) An application assistant may not assist or participate in
53 the filing of an application that the application assistant knows:

54 (A) Contains false or incorrect information; or

55 (B) Falsely claims that disclosure of either the applicant's
56 residential or mailing address or both types of addresses
57 threatens the safety of the applicant or the applicant's children
58 or the minor or incapacitated person on whose behalf the
59 application is made.

60 (g) A person who violates the provisions of subsection (f)
61 of this section shall be guilty of a misdemeanor, and upon
62 conviction thereof, shall be confined in jail for a period of not
63 more than one year.

§48-28A-104. Cancellation.

1 Certification for the program may be canceled if one or
2 more of the following conditions apply:

3 (1) If the program participant obtains a name change,
4 unless the program participant provides the Secretary of State
5 with documentation of a legal name change within ten
6 business days of the name change;

7 (2) If there is a change in the residential address of the
8 program participant from the one listed on the application,
9 unless the program participant provides the Secretary of State
10 with notice of the change in a manner prescribed by the
11 Secretary of State; or

12 (3) The applicant or program participant violates
13 subsection (f), section one hundred three of this article.

§48-28A-105. Use of designated address.

1 (a) Upon demonstration of a program participant's
2 certification in the program, state and local agencies and the
3 courts of this state shall accept the designated address as a
4 program participant's address for the purposes of creating a
5 new public record unless the Secretary of State has
6 determined that:

7 (1) The agency or court has a bona fide statutory or
8 administrative requirement for the use of the program
9 participant's residential or mailing address, such that the
10 agency or court is unable to fulfill its statutory duties and
11 obligations without the program participant's residential or
12 mailing address; and

13 (2) The program participant's residential or mailing
14 address will be used only for those statutory and
15 administrative purposes, and shall be kept confidential,
16 subject to the confidentiality provisions of section one
17 hundred eight of this article.

18 (b) Notwithstanding the provisions of subsection (a) and
19 upon the request of the Secretary of State, the Division of
20 Motor Vehicles shall use the designated address for the

21 purposes of issuing a driver's license or identification card:
22 *Provided*, That the division of motor vehicles shall not be
23 prohibited from collecting and retaining a program
24 participant's residential or mailing address or both addresses
25 to be used only for statutory and administrative purposes.
26 Any residential or mailing address of a program participant
27 collected and retained pursuant to this subsection shall be
28 kept confidential, subject to the provisions of section one
29 hundred eight of this article.

30 (c) A designated address may be a post office box and
31 may be used by a participant for voter registration purposes,
32 as long as the Secretary of State has on file for the participant
33 a residential and mailing address, as provided in section one
34 hundred three of this article.

§48-28A-106. Disclosure to law enforcement and state agencies.

1 (a) The Secretary of State may make a program
2 participant's residential or mailing address available for
3 inspection or copying, under the following circumstances:

4 (1) Upon request of a law-enforcement (1) agency in the
5 manner provided for by rule; or

6 (2) Upon request of the head of a state agency or
7 designee in the manner provided for by rule and upon a
8 showing of a bona fide statutory or administrative
9 requirement for the use of the program participant's
10 residential or mailing address, such that the agency head or
11 designee is unable to fulfill statutory duties and obligations
12 without the program participant's residential or mailing
13 address.

§48-28A-107. Disclosure pursuant to court order or canceled certification.

1 (a) The Secretary of State shall make a program
2 participant's residential or mailing address or both addresses

3 available for inspection or copying to a person identified in
4 a court order, upon receipt of a certified court order that
5 specifically requires the disclosure of a particular program
6 participant's residential or mailing address or both addresses
7 and the reasons for the disclosure; or

8 (b) The Secretary of State may make a program
9 participant's residential or mailing address or both addresses
10 available for inspection or copying if the program applicant
11 or participant's certification has been canceled because the
12 applicant or program participant has violated subsection (f),
13 section one hundred three of this article.

§48-28A-108. Confidentiality.

1 A program participant's application and supporting
2 materials are not a public record and shall be kept
3 confidential by the Secretary of State. Any employee of any
4 agency or court who willfully breaches the confidentiality of
5 these records or willfully discloses the name, residential or
6 mailing address or both addresses of a program participant
7 in violation of the provisions of this article, shall be guilty of
8 a misdemeanor and, upon conviction thereof, shall be fined
9 not less than five hundred dollars nor more than one thousand
10 dollars or confined in jail not more than one year, or both
11 fined and confined.

§48-28A-109. Secretary of State; liability.

1 This article creates no liability upon the Secretary of
2 State for any transaction compromised by any illegal act or
3 inappropriate uses associated with this article.

§48-28A-110. Rules.

1 The Secretary of State is hereby directed to propose
2 legislative rules and emergency rules implementing the
3 provisions of this article in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code.

CHAPTER 2

**(H.B. 209 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Governor's Office, fund 0101, fiscal year 2008, organization 0100, to the Department of Agriculture, fund 0131, fiscal year 2008, organization 1400, to the Department of Administration, Department of Administration - Office of the Secretary, fund 0186, fiscal year 2008, organization 0201, to the Department of Administration - West Virginia Public Employees Grievance Board, fund 0220, fiscal year 2008, organization 0219, to the Department of Administration - Real Estate Division, fund 0610, fiscal year 2008, organization 0233, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, to the Department of Commerce, Department of Commerce - Office of the Secretary, fund 0606, fiscal year 2008, organization 0327, to the Department of Education - State Department of Education, fund 0313, fiscal year 2008, organization 0402, to the Department of Education and the Arts, Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2008, organization 0431, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2008, organization 0432, to the Department of Health and Human Resources - Division of Health-Central Office, fund 0407, fiscal year 2008, organization 0506, to the Department of Health and Human

Resources - Division of Human Services, fund 0403, fiscal year 2008, organization 0511, to the Department of Military Affairs and Public Safety, Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2008, organization 0601, to a new item of appropriation designated to the Bureau of Senior Services, Bureau of Senior Services, fund 0420, fiscal year 2008, organization 0508, to Higher Education, West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2008, organization 0420, and to Higher Education, Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2008, organization 0442, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated the seventeenth day of August, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand seven; and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand eight; and

WHEREAS, It appears from the Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 0101, fiscal year 2008, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations of General Revenue.

3 EXECUTIVE

4 *5-Governor’s Office*

5 (WV Code Chapter 5)

6 Fund 0101 FY 2008 Org 0100

7	8	9	Act- ivity	General Revenue Funds
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10	5	Unclassified - Surplus	097	\$ 44,000
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11 And, That the total appropriation for the fiscal year
12 ending the thirtieth day of June, two thousand eight, to fund
13 0131, fiscal year 2008, organization 1400, be supplemented
14 and amended by increasing an existing item of appropriation
15 as follows:

16 TITLE II – APPROPRIATIONS.

17 Section 1. Appropriations of General Revenue.

18 EXECUTIVE

19 *10-Department of Agriculture*

20 (WV Code Chapter 19)

21 Fund 0131 FY 2008 Org 1400

2578 APPROPRIATIONS [Ch. 2

					General Revenue Funds
			Act- ivity		
25	7	Unclassified - Surplus	097	\$	400,000

26 And, That the total appropriation for the fiscal year
27 ending the thirtieth day of June, two thousand eight, to fund
28 0186, fiscal year 2008, organization 0201, be supplemented
29 and amended by increasing an existing item of appropriation
30 as follows:

31 TITLE II – APPROPRIATIONS.

32 **Section 1. Appropriations of General Revenue.**

33 **DEPARTMENT OF ADMINISTRATION**

34 *18-Department of Administration-*
35 *Office of the Secretary*

36 (WV Code Chapter 5F)

37 Fund 0186 FY 2008 Org 0201

					General Revenue Funds
			Act- ivity		
41	4	Unclassified - Surplus	097	\$	200,000

42 And, That the total appropriation for the fiscal year
43 ending the thirtieth day of June, two thousand eight, to fund
44 0220, fiscal year 2008, organization 0219, be supplemented
45 and amended by increasing an existing item of appropriation
46 as follows:

47 TITLE II – APPROPRIATIONS.

48 Section 1. Appropriations of General Revenue.

49 DEPARTMENT OF ADMINISTRATION

50 24-West Virginia Public Employees Grievance Board

51 (WV Code Chapter 6C)

52 Fund 0220 FY 2008 Org 0219

53			General
54		Act-	Revenue
55		ivity	Funds

56	4	Unclassified - Surplus	097	\$	280,000
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57 And, That the total appropriation for the fiscal year
58 ending the thirtieth day of June, two thousand eight, to fund
59 0610, fiscal year 2008, organization 0233, be supplemented
60 and amended by increasing an existing item of appropriation
61 as follows:

62 TITLE II – APPROPRIATIONS.

63 Section 1. Appropriations of General Revenue.

64 DEPARTMENT OF ADMINISTRATION

65 32-Real Estate Division

66 (WV Code Chapter 5A)

67 Fund 0610 FY 2008 Org 0233

2580 APPROPRIATIONS [Ch. 2

68				
69			Act-	General
70			ivity	Revenue
				Funds

71	1	Unclassified - Total - Surplus .	284	\$ 118,260
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72 And, That the total appropriation for the fiscal year
73 ending the thirtieth day of June, two thousand eight, to fund
74 0256, fiscal year 2008, organization 0307, be supplemented
75 and amended by increasing an existing item of appropriation
76 as follows:

77 TITLE II – APPROPRIATIONS.

78 **Section 1. Appropriations of General Revenue.**

79 **DEPARTMENT OF COMMERCE**

80 *36-West Virginia Development Office*

81 (WV Code Chapter 5B)

82 Fund 0256 FY 2008 Org 0307

83				General
84			Act-	Revenue
85			ivity	Funds

86	7	Unclassified - Surplus	097	\$ 3,300,000
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87 And, That the total appropriation for the fiscal year
88 ending the thirtieth day of June, two thousand eight, to fund
89 0606, fiscal year 2008, organization 0327, be supplemented
90 and amended by increasing an existing item of appropriation
91 and adding language as follows:

2582 APPROPRIATIONS [Ch. 2

118 *46-State Department of Education*

119 (WV Code Chapters 18 and 18A)

120 Fund 0313 FY 2008 Org 0402

121							General
122							Revenue
123						Act- ivity	Funds

124	4	Unclassified - Surplus	097	\$	1,000,000		
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125 And, That the total appropriation for the fiscal year
126 ending the thirtieth day of June, two thousand eight, to fund
127 0294, fiscal year 2008, organization 0431, be supplemented
128 and amended by increasing an existing item of appropriation
129 as follows:

130 TITLE II – APPROPRIATIONS.

131 **Section 1. Appropriations of General Revenue.**

132 **DEPARTMENT OF EDUCATION AND THE ARTS**

133 *52-Department of Education and the Arts-*
134 *Office of the Secretary*

135 (WV Code Chapter 5F)

136 Fund 0294 FY 2008 Org 0431

137							General
138							Revenue
139						Act- ivity	Funds

140	1	Unclassified - Surplus	097	\$	50,000		
-----	---	----------------------------------	-----	----	--------	--	--

141 And, That the total appropriation for the fiscal year
142 ending the thirtieth day of June, two thousand eight, to fund

143 0293, fiscal year 2008, organization 0432, be supplemented
144 and amended by increasing existing items of appropriation as
145 follows:

146 TITLE II – APPROPRIATIONS.

147 Section 1. Appropriations of General Revenue.

148 DEPARTMENT OF EDUCATION AND THE ARTS

149 *53-Division of Culture and History*

150 (WV Code Chapter 29)

151 Fund 0293 FY 2008 Org 0432

152					
153					General
154					Revenue
					Funds
155	4	Unclassified - Surplus	097	\$	190,000
156	5	Capital Outlay Repairs and			
157	6	Equipment - Surplus (R) . . .	677	\$	6,100,000

158 And, That the total appropriation for the fiscal year
159 ending the thirtieth day of June, two thousand eight, to fund
160 0407, fiscal year 2008, organization 0506, be supplemented
161 and amended to read as follows:

162 TITLE II – APPROPRIATIONS.

163 Section 1. Appropriations of General Revenue.

164 DEPARTMENT OF HEALTH AND HUMAN
165 RESOURCES

166 *61-Division of Health-*
167 *Central Office*

2584

APPROPRIATIONS

[Ch. 2

168

(WV Code Chapter 16)

169

Fund 0407 FY 2008 Org 0506

170

171

172

**Act-
ivity****General
Revenue
Funds**

173	Personal Services	001	\$ 7,570,163
174	Annual Increment	004	164,981
175	Employee Benefits	010	3,090,748
176	Level 1, 2 and 3 Trauma Centers .	013	0
177	Chief Medical Examiner	045	3,464,708
178	Unclassified	099	4,902,046
179	Safe Drinking Water Program .	187	517,798
180	Women, Infants and Children .	210	65,000
181	Basic Public Health Services		
182	Support	212	3,348,475
183	Early Intervention	223	3,307,043
184	Cancer Registry	225	284,587
185	ABCA Tobacco Retailer		
186	Education Program-		
187	Transfer	239	200,000
188	CARDIAC Project	375	470,000
189	State EMS Technical		
190	Assistance	379	1,424,858
191	EMS Program for Children . . .	381	50,686
192	Statewide EMS Program		
193	Support (R)	383	940,286
194	Primary Care Centers-Mortgage		
195	Finance	413	796,718
196	Black Lung Clinics	467	198,646
197	Center for End of Life	545	250,000
198	Women's Right to Know	546	40,000
199	Pediatric Dental Services	550	150,000
200	Vaccine for Children	551	438,437
201	Adult Influenza Vaccine	552	65,000

236 From the Unclassified line item (activity 099), \$50,000
237 shall be expended for the West Virginia Aids Coalition. Also
238 included is the above appropriation for Unclassified, is an
239 additional \$100,000 for Human Papillomavirus (HPV)
240 Education.

241 From the Maternal and Child Health Clinics, Clinicians,
242 and Medical Contracts and Fees line item, \$400,000 shall be
243 transferred to the Breast and Cervical Cancer Diagnostic
244 Treatment Fund.

245 From the above appropriation for ABCA Tobacco
246 Retailer Education Program-Transfer (activity 239),
247 \$200,000 shall be transferred to the Alcohol Beverage
248 Control Administration (fund 7352, org 0708) for
249 expenditure.

250 Included in the above appropriation for Primary Care
251 Centers-Mortgage Finance is \$50,000 for the mortgage
252 payment for the Lincoln Primary Care Center, Inc.; \$53,140
253 for the mortgage payment for the Monroe Health Center;
254 \$42,564 for the mortgage payment for Roane County Family
255 Health Care, Inc.; \$30,000 for the mortgage payment for the
256 Tug River Health Association, Inc.; \$48,000 for the mortgage
257 payment for the Primary Care Systems (Clay); \$20,000 for
258 the mortgage payment for the Belington Clinic; \$30,000 for
259 the mortgage payment for the Tri-County Health Clinic;
260 \$15,000 for the mortgage payment for Valley Health Care
261 (Randolph); \$58,560 for the mortgage payment for Valley
262 Health Systems, Inc. (Woman's Place and Harts Health
263 Clinic); \$8,000 for the mortgage payment for Northern
264 Greenbrier Health Clinic; \$12,696 for the mortgage payment
265 for the Women's Care, Inc. (Putnam); \$25,000 for the
266 mortgage payment for the Preston-Taylor Community Health
267 Centers, Inc.; \$20,000 for the mortgage payment for the
268 North Fork Clinic (Pendleton); \$40,000 for the mortgage
269 payment for the Pendleton Community Care; \$38,400 for the
270 mortgage payment for Clay-Battelle Community Health

271 Center; \$33,600 for the mortgage payment for Mountaineer
272 Health Clinic in Paw Paw; \$13,000 for the mortgage payment
273 for the St. George Medical Clinic; \$28,000 for the mortgage
274 payment for the Bluestone Health Center; \$45,000 for the
275 mortgage payment for Wheeling Health Right; \$48,000 for
276 the mortgage payment for the Minnie Hamilton Health Care
277 Center, Inc.; \$54,000 for the mortgage payment for the
278 Shenandoah Valley Medical Systems, Inc.; \$45,000 for the
279 mortgage payment for the Change, Inc.; and \$28,958 for the
280 mortgage payment for the Wirt County Health Services
281 Association.

282 From the above appropriation for State Aid to Local
283 Health Departments (activity 702) \$20,000 shall be used,
284 along with any grants that may be obtained, for the purpose
285 of contracting with an independent consultant to conduct a
286 comprehensive study, administered by Local Health Inc., of
287 the revenues of the state's local health departments to
288 develop a method for the distribution of state funds to local
289 health departments that will best serve the citizens of the
290 state.

291 Also included in the above appropriation for State Aid to
292 Local Health Departments is additional funding for salary
293 increases in amounts consistent with those provided to state
294 employees under appropriations made for that purpose in this
295 act.

296 From the above appropriation for Unclassified (activity
297 099), \$50,000 is for Hospital Hospitality House of
298 Huntington.

299 And, That the total appropriation for the fiscal year
300 ending the thirtieth day of June, two thousand eight, to fund
301 0403, fiscal year 2008, organization 0511, be supplemented
302 and amended by increasing an existing line item and adding
303 language as follows:

2588 APPROPRIATIONS [Ch. 2

304 TITLE II – APPROPRIATIONS.

305 **Section 1. Appropriations of General Revenue.**

306 **DEPARTMENT OF HEALTH AND HUMAN**
307 **RESOURCES**

308 *65-Division of Human Services*

309 (WV Code Chapters 9, 48 and 49)

310 Fund 0403, FY 2008, Org 0511.

311						General
312						Revenue
313						Funds

314	4	Unclassified - Surplus	097	\$	3,000,000	
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315 From the appropriation for Social Services (fund 0403,
316 activity 195) an amount not to exceed \$2,000,000 may be
317 transferred to West Virginia Works Separate State College
318 Program (fund 5467) and West Virginia Works Separate
319 State-Two Parent Families Program (fund 5468) in an
320 amount to be determined by the Secretary of the Department
321 of Health and Human Resources.

322 The above appropriation for Unclassified - Surplus (fund
323 0403, activity 097) shall be transferred to the West Virginia
324 Works Separate State College Program (fund 5467) and West
325 Virginia Works Separate State Two-Parent Families Program
326 (fund 5468) in an amount to be determined by the Secretary
327 of the Department of Health and Human Resources.

328 And, That the total appropriation for the fiscal year
329 ending the thirtieth day of June, two thousand eight, to fund
330 0430, fiscal year 2008, organization 0601, be supplemented

331 and amended by adding a new item of appropriation and
332 increasing an existing item of appropriation as follows:

333 TITLE II – APPROPRIATIONS.

334 Section 1. Appropriations of General Revenue.

335 DEPARTMENT OF MILITARY AFFAIRS
336 AND PUBLIC SAFETY

337 *66-Department of Military Affairs and Public Safety-*
338 *Office of the Secretary*

339 (WV Code Chapter 5F)

340 Fund 0430 FY 2008 Org 0601

341					General
342					Revenue
343					Funds
344	1	Unclassified - Surplus	097	\$	250,000
345	6a	Interoperable Communication			
346	6b	System - Surplus	771		10,000,000

347 And, That chapter twelve, Acts of the Legislature, regular
348 session, two thousand seven, known as the Budget Bill, be
349 supplemented and amended by adding to Title II, section one
350 thereof, the following:

351 TITLE II – APPROPRIATIONS.

352 Section 1. Appropriations of General Revenue.

353 BUREAU OF SENIOR SERVICES

354 *88a-Bureau of Senior Services*

2590 APPROPRIATIONS [Ch. 2

355 (WV Code Chapter 29)

356 Fund 0420 FY 2008 Org 0508

357						General
358						Revenue
359						Funds

360	1	Unclassified - Total - Surplus .	284	\$	500,000	
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361 And, That the total appropriation for the fiscal year
362 ending the thirtieth day of June, two thousand eight, to fund
363 0596, fiscal year 2008, organization 0420, be supplemented
364 and amended by increasing an existing item of appropriation
365 as follows:

366 TITLE II – APPROPRIATIONS.

367 **Section 1. Appropriations of General Revenue.**

368 **HIGHER EDUCATION**

369 *89-West Virginia Council for*
370 *Community and Technical College Education-*
371 *Control Account*

372 (WV Code Chapter 18B)

373 Fund 0596 FY 2008 Org 0420

374						General
375						Revenue
376						Funds

377	1	Unclassified - Surplus	097	\$	3,330,438	
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378 And, That the total appropriation for the fiscal year
379 ending the thirtieth day of June, two thousand eight, to fund

380 0586, fiscal year 2008, organization 0442, be supplemented
381 and amended by increasing an existing item and adding a
382 new item of appropriation as follows:

383 TITLE II – APPROPRIATIONS.

384 **Section 1. Appropriations of General Revenue.**

385 **HIGHER EDUCATION**

386 *91-Higher Education Policy Commission-*
387 *System-*
388 *Control Account*

389 (WV Code Chapter 18B)

390 Fund 0586 FY 2008 Org 0442

391			General
392		Act-	Revenue
393		ivity	Funds
394	1 Unclassified - Surplus	097	\$ 1,677,318
395	36a Marshall School of Medicine -		
396	36b Surplus	452	2,000,000

397 The purpose of this supplementary appropriation bill is to
398 supplement the accounts in the budget act for the fiscal year
399 ending the thirtieth day of June, two thousand eight, by
400 providing for new items of appropriation to be established
401 therein and to supplement, amend, increase and add items of
402 appropriation in the aforesaid accounts for the designated
403 spending units for expenditure during the fiscal year two
404 thousand eight.

CHAPTER 3

**(H.B. 210 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2008, organization 0802, and the Department of Transportation, Division of Highways, fund 9017, fiscal year 2008, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand eight.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated the seventeenth day of August, two thousand seven, setting forth therein the cash balances and investments as of the first day of July, two thousand seven, and further included the estimate of revenues for the fiscal year two thousand eight, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand eight; and

WHEREAS, It thus appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand eight; therefore

Be it enacted by the Legislature of West Virginia:

1 That the items of the total appropriation from the State
2 Road Fund, to the Department of Transportation, Division of
3 Motor Vehicles, fund 9007, fiscal year 2008, organization
4 0802, be amended and increased in the line item as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 2. Appropriations from State Road Fund.**

7 **DEPARTMENT OF TRANSPORTATION**

8 *93-Division of Motor Vehicles*

9 (WV Code Chapters 17, 17A, 17B, 17C, 20 and 24A)

10 Fund 9007 FY 2008 Org 0802

11	12	13	Act- ivity	State Road Fund
14	4	Unclassified	099	\$ 700,000

15 And that the items of the total appropriation from the
16 State Road Fund, to the Department of Transportation,
17 Division of Highways, fund 9017, fiscal year 2008,
18 organization 0803, be amended and increased in the line
19 items as follows:

20 TITLE II--APPROPRIATIONS.

21 **Sec. 2. Appropriations from State Road Fund.**

22 **DEPARTMENT OF TRANSPORTATION**

23 *94-Division of Highways*

2594		APPROPRIATIONS		[Ch. 4
24		(WV Code Chapters 17 and 17C)		
25		Fund <u>9017</u> FY <u>2008</u> Org <u>0803</u>		
26				General
27			Act-	Revenue
28			ivity	Funds
29	2	Maintenance	237	\$37,728,000
30	3	Maintenance, Contract Paving		
31	4	and Secondary Road		
32	5	Maintenance	272	25,000,000
33	6	Bridge Repair and Replacement	273	10,000,000
34	12	Nonfederal Aid Construction . .	281	10,000,000

35 The purpose of this supplementary appropriation bill is to
36 supplement, amend and increase existing items in the
37 aforesaid accounts for the designated spending units for
38 expenditure during the fiscal year ending the thirtieth day of
39 June, two thousand eight.

CHAPTER 4

**(H.B. 211 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 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 eight, to a new item of appropriation designated to the Department of Health and

Human Resources, Division of Human Services - West Virginia Works Separate State College Program Fund, fund 5467, fiscal year 2008, organization 0511, to a new item of appropriation designated to the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2008, organization 0511, to a new item of appropriation designated to the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, to a new item of appropriation designated to the Department of Revenue, Alcohol Beverage Control Administration - Wine Tax Administration Fund, fund 7087, fiscal year 2008, organization 0708, and to a new item of appropriation designated to the Bureau of Senior Services, Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2008, organization 0508, supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State College Program Fund, fund 5467, fiscal year 2008, organization 0511, in the Department of Health and Human Resources, Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2008, organization 0511, in the Department of Revenue, Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2008, organization 0701, in the Department of Revenue, Alcohol Beverage Control Administration - Wine Tax Administration Fund, fund 7087, fiscal year 2008, organization 0708, and in the Bureau of Senior Services, Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2008, organization 0508, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND HUMAN**

4 **RESOURCES**

5 *179a-Division of Human Services-*
6 *West Virginia Works Separate State College Program*
7 *Fund*

8 (WV Code Chapter 9)

9 Fund 5467 FY 2008 Org 0511

10	11	12	13		Act-	Other
				ivity	Funds	
	1	096	\$	1,700,000		

14 And, That chapter twelve, Acts of the Legislature, regular
15 session, two thousand seven, known as the Budget Bill, be
16 supplemented and amended by adding to Title II, section
17 three thereof, the following:

18 TITLE II--APPROPRIATIONS.

19 **Sec. 3. Appropriations from other funds.**

20 **DEPARTMENT OF HEALTH AND HUMAN**

21 **RESOURCES**

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2008, organization 0314, the Department of Revenue - Alcohol Beverage Control Administration, fund 7352, fiscal year 2008, organization 0708, and the Public Service Commission, fund 8623, fiscal year 2008, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand eight, therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand eight, to fund 3355, fiscal year 2008, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF COMMERCE**

4 *136-Miners' Health, Safety and Training Fund*

5 (WV Code Chapter 22A)

6 Fund 3355 FY 2008 Org 0314

7	8							
						Act-	Other	
						ivity	Funds	
9	4	Unclassified	099	\$	500,000			

10 And, That the total appropriation for the fiscal year
 11 ending the thirtieth day of June, two thousand eight, to fund
 12 7352, fiscal year 2008, organization 0708, be supplemented
 13 and amended by increasing the total appropriation as follows:

14 TITLE II – APPROPRIATIONS.

15 **Sec. 3. Appropriations from other funds.**

16 **DEPARTMENT OF REVENUE**

17 *217-Alcohol Beverage Control Administration*

18 (WV Code Chapter 60)

19 Fund 7352 FY 2008 Org 0708

20			Act-		Other
21			ivity		Funds

22	4	Unclassified (R)	099	\$	500,000
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23 And, That the total appropriation for the fiscal year
24 ending the thirtieth day of June, two thousand eight, to fund
25 8623, fiscal year 2008, organization 0926, be supplemented
26 and amended by increasing the total appropriation as follows:

27 TITLE II – APPROPRIATIONS.

28 **Sec. 3. Appropriations from other funds.**

29 **MISCELLANEOUS BOARDS AND COMMISSIONS**

30 *230-Public Service Commission*

31 (WV Code Chapter 24)

32 Fund 8623 FY 2008 Org 0926

33			Act-		Other
34			ivity		Funds

35	4	Unclassified	099	\$	250,000
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36 The purpose of this supplementary appropriation bill is to
37 supplement and increase items of appropriation in the
38 aforesaid accounts for the designated spending units for
39 expenditure during the fiscal year two thousand eight.

CHAPTER 6

**(S.B. 2009 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 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 eight, to a new item of appropriation designated to the Department of Military Affairs and Public Safety - Fire Commission, fund 8819, fiscal year 2008, organization 0619, and to a new item of appropriation designated to the Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2008, organization 0913, by supplementing and amending chapter twelve, Acts of the Legislature, regular session, two thousand seven, 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 - Fire Commission, fund 8819, fiscal year 2008, organization 0619, and in the Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2008, organization 0913, available for expenditure during the fiscal year

ending the thirtieth day of June, two thousand eight, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, Acts of the Legislature, regular session, two thousand seven, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF MILITARY AFFAIRS AND**
4 **PUBLIC SAFETY**

5 *307a-Fire Commission*

6 (WV Code Chapter 29)

7 Fund 8819 FY 2008 Org 0619

8		Act-		Other
9		ivity		Funds

10	1	Unclassified	096	\$	65,200
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11 And that chapter twelve, Acts of the Legislature,
12 regular session, two thousand seven, known as the Budget
13 Bill, be supplemented and amended by adding to Title II,
14 section six thereof, the following:

15 TITLE II--APPROPRIATIONS.

16 **Sec. 6. Appropriations of federal funds.**

17 **MISCELLANEOUS BOARDS AND COMMISSIONS**

18 *314a-Board of Pharmacy*

19 (WV Code Chapter 30)

20 Fund 8857 FY 2008 Org 0913

21	22	Act- ivity	Other Funds
23	1	Unclassified	096 \$ 155,122

24 The purpose of this supplementary appropriation bill is
 25 to supplement the accounts in the budget act for the fiscal
 26 year ending the thirtieth day of June, two thousand eight, by
 27 providing for new items of appropriation to be established
 28 therein to appropriate funds for the designated spending
 29 units for expenditure during the fiscal year two thousand
 30 eight.



CHAPTER 7

**(S.B. 2011 - By Senators Tomblin, Mr. President, and Caruth)
 [By Request of the Executive]**

 [Passed August 21, 2007; in effect from passage.]
 [Approved by the Governor on August 27, 2007.]

AN ACT expiring funds to the balance of the Public Service
 Commission Fund, fund 8623, fiscal year 2008, organization

0926, for the fiscal year ending the thirtieth day of June, two thousand eight, in the amount of four hundred thirty-nine thousand dollars from the Public Service Commission Pipeline Safety Fund, fund 8624, fiscal year 2008, organization 0926.

WHEREAS, The Governor finds that the account balance in the Public Service Commission Pipeline Safety Fund, fund 8624, fiscal year 2008, organization 0926, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the Public Service Commission
2 Fund, fund 8623, fiscal year 2008, organization 0926, be
3 increased by expiring to that fund four hundred thirty-nine
4 thousand dollars from the Public Service Commission
5 Pipeline Safety Fund, fund 8624, fiscal year 2008,
6 organization 0926, to be available for expenditure during the
7 fiscal year two thousand eight.

8 The purpose of this bill is to expire four hundred thirty-
9 nine thousand dollars from the Public Service Commission
10 Pipeline Safety Fund, fund 8624, fiscal year 2008,
11 organization 0926, to the balance of the Public Service
12 Commission Fund, fund 8623, fiscal year 2008, organization
13 0926, for the fiscal year ending the thirtieth day of June, two
14 thousand eight, to be available for expenditure during the
15 fiscal year two thousand eight.

CHAPTER 8

**(S.B. 2013 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on August 27, 2007.]

AN ACT expiring funds to the balance of the State School Building Fund, fund 3957, fiscal year 2008, organization 0402, for the fiscal year ending the thirtieth day of June, two thousand eight, in the amount of one million two hundred ninety-three thousand six hundred ninety-six dollars from the School Building Authority, fund 3514, fiscal year 2008, organization 0402.

WHEREAS, The Governor finds that the account balance in the School Building Authority, fund 3514, fiscal year 2008, organization 0402, exceeds that which is necessary for the purpose for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the State School Building Fund,
2 fund 3957, fiscal year 2008, organization 0402, be increased
3 by expiring to that fund one million two hundred ninety-
4 three thousand six hundred ninety-six dollars from the
5 School Building Authority, fund 3514, fiscal year 2008,
6 organization 0402, to be available for expenditure during the
7 fiscal year two thousand eight.

8 The purpose of this bill is to expire one million two
9 hundred ninety-three thousand six hundred ninety-six
10 dollars from the School Building Authority, fund 3514,

11 fiscal year 2008, organization 0402, to the balance of the
12 State School Building Fund, fund 3957, fiscal year 2008,
13 organization 0402, for the fiscal year ending the thirtieth day
14 of June, two thousand eight, to be available for expenditure
15 during the fiscal year two thousand eight.

CHAPTER 9

**(S.B. 2007 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to repeal §5-26-1, §5-26-2, §5-26-2a, §5-26-2b, §5-26-3, §5-26-4, §5-26-5, §5-26-6 and §5-26-8 of the Code of West Virginia, 1931, as amended; to repeal §18-5-18d of said code; to amend and reenact §16-5K-2 and §16-5K-4 of said code; to amend and reenact §49-9-3 and §49-9-15 of said code; and to amend said code by adding thereto a new article, designated §49-6C-1 and §49-6C-2, all relating to repeal of the code provisions authorizing the Governor's Cabinet on Children and Families; transferring necessary powers and duties from said cabinet to the Bureau for Children and Families; transferring control of the Children's Trust Fund from said cabinet to the Bureau for Children and Families in the Department of Health and Human Resources; and correcting code references.

Be it enacted by the Legislature of West Virginia:

That §5-26-1, §5-26-2, §5-26-2a, §5-26-2b, §5-26-3, §5-26-4, §5-26-5, §5-26-6 and §5-26-8 of the Code of West Virginia, 1931, as amended, be repealed; that §18-5-18d of said code be repealed;

that §16-5K-2 and §16-5K-4 of said code be amended and reenacted; that §49-9-3 and §49-9-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §49-6C-1 and §49-6C-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-2. Definitions.

1 Unless the context clearly otherwise indicates, as used
2 in this article:

3 (a) "Bureau" means the Bureau for Children and
4 Families within the Department of Health and Human
5 Resources.

6 (b) "Council" means the Governor's Early Intervention
7 Interagency Coordinating Council.

8 (c) "Department" means the Department of Health and
9 Human Resources.

10 (d) "Early intervention services" means developmental
11 services which:

12 (1) Are designed to meet the developmental needs of
13 developmentally delayed infants and toddlers and the needs
14 of the family related to enhancing the child's development;

15 (2) Are selected in collaboration with the parents;

16 (3) Are provided under public supervision in conformity
17 with an individualized family service plan and at no cost to
18 families;

19 (4) Meet the state's early intervention standards, as
20 established by the Department of Health and Human
21 Resources with the assistance of the Governor's Early
22 Intervention Interagency Coordinating Council;

23 (5) Include assistive technology, audiology, audiology
24 case management, family training, counseling and home
25 visits, health services necessary to enable a child to benefit
26 from other early intervention services, medical services only
27 for diagnostic or evaluation purposes, nursing services,
28 nutrition services, occupational therapy, physical therapy,
29 psychological services, social work services, special
30 instruction, speech-language pathology, vision and
31 transportation; and

32 (6) Are provided by licensed or otherwise qualified
33 personnel, including audiologists, family therapists, nurses,
34 nutritionists, occupational therapists, orientation and
35 mobility specialists, physical therapists, physicians,
36 psychologists, social workers, special educators,
37 speech-language pathologists and paraprofessionals
38 appropriately trained and supervised.

39 (e) "Infants and toddlers with developmental delay"
40 means children from birth to thirty-six months of age who
41 need early intervention services for any of the following
42 reasons:

43 (1) They are experiencing developmental delays, as
44 measured by appropriate methods and procedures, in one or
45 more of the following areas: Cognitive, physical, including
46 visual and hearing, communicative, adaptive, social,
47 language and speech, or psycho-social development or
48 self-help skills; or

49 (2) They have a diagnosed physical or mental condition
50 that has a high probability of resulting in developmental
51 delay; or

52 (3) They are at risk of having substantial developmental
53 delays if early intervention services are not provided.

§16-5K-4. Interagency coordinating council.

1 (a) The Governor's Early Intervention Interagency
2 Coordinating Council is continued. The council is
3 composed of at least fifteen members appointed by the
4 Governor with additional ex officio members representing
5 specific agencies serving infants and toddlers with
6 developmental delays.

7 (b) The membership of the council shall consist of the
8 following:

9 (1) At least three parents of children, ages birth through
10 six years of age, who have developmental delays;

11 (2) At least three persons representative of the public or
12 private service providers;

13 (3) At least one member of the House of Delegates
14 recommended by the Speaker of the House of Delegates and
15 one member of the Senate recommended by the Senate
16 President;

17 (4) At least one person from higher education involved
18 in training individuals to provide services under this article;
19 and

20 (5) A representative of each of the agencies involved in
21 the provision of or payment for early intervention services
22 to infants and toddlers with developmental delays and their
23 families.

24 (c) The council shall meet at least quarterly and in such
25 place as it considers necessary.

26 (d) The council is responsible for the following
27 functions:

28 (1) To advise and assist the Department of Health and
29 Human Resources in the development and implementation
30 of early intervention policies;

31 (2) To assist the department in achieving the full
32 participation of all relevant state agencies and programs;

33 (3) To collaborate with the Bureau for Children and
34 Families in the coordination of early intervention services
35 with other programs and services for children and families;

36 (4) To assist the department in the effective
37 implementation of a statewide system of early intervention
38 services;

39 (5) To assist the department in the resolution of disputes;

40 (6) To advise and assist the department in the
41 preparation of grant applications; and

42 (7) To prepare and submit an annual report to the
43 Governor, the Legislature and the United States Secretary of
44 Education on the status of early intervention programs
45 within the state.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6C. CHILDREN'S TRUST FUND.

§49-6C-1. Continuation and transfer of control of trust fund.

1 (a) The Children's Fund, created for the sole purpose of
2 awarding grants, loans and loan guarantees for child abuse
3 and neglect prevention activities by enactment of chapter

4 twenty-seven, Acts of the Legislature, one thousand nine
5 hundred eighty-four, as last amended and reenacted by
6 chapter one hundred fifty-nine, Acts of the Legislature, one
7 thousand nine hundred ninety-nine, is hereby continued and
8 renamed the West Virginia Children's Trust Fund:
9 *Provided*, That upon the effective date of the enactment of
10 this section during the second extraordinary session of the
11 Legislature in two thousand seven, the fund shall be
12 administered by the Commissioner of the Bureau for
13 Children and Families. Gifts, bequests or donations for this
14 purpose, in addition to appropriations to the fund, shall be
15 deposited in the State Treasury in a special revenue account
16 under the control of the Secretary of the Department of
17 Health and Human Resources or his or her designee.

18 (b) Each state taxpayer may voluntarily contribute a
19 portion of the taxpayer's state income tax refund to the
20 Children's Trust Fund by designating the contribution on the
21 state personal income tax return form. The bureau shall
22 approve the wording of the designation on the income tax
23 return form. The State Tax Commissioner shall determine
24 by the first day of July of each year the total amount
25 designated pursuant to this subsection and shall report that
26 amount to the State Treasurer, who shall credit that amount
27 to the Children's Trust Fund.

28 (c) All interest accruing from investment of moneys in
29 the Children's Trust Fund shall be credited to the fund. The
30 Legislative Auditor shall conduct an audit of the fund before
31 the first day of July, two thousand eight, and at least every
32 three fiscal years thereafter.

33 (d) Grants, loans and loan guarantees may be awarded
34 from the Children's Trust Fund by the Commissioner of the
35 Bureau for Children and Families for child abuse and
36 neglect prevention activities.

37 (e) Upon the effective date of the enactment of this
38 section, all employees, records, responsibilities, obligations,
39 assets and property, of whatever kind and character, of the
40 Governor's Cabinet on Children and Families are hereby
41 transferred to the Bureau for Children and Families within
42 the Department of Health and Human Resources, including,
43 but not limited to, all rights and obligations held by the
44 Governor's Cabinet on Children and Families under any
45 grants, loans or loan guarantees previously awarded from
46 the Children's Trust Fund.

47 (f) All orders, determinations, rules, permits, grants,
48 contracts, certificates, licenses, waivers, bonds,
49 authorizations and privileges which have been issued, made,
50 granted or allowed to become effective by the Governor, by
51 any state department or agency or official thereof, or by a
52 court of competent jurisdiction, in the performance of
53 functions which have been transferred to the Bureau for
54 Children and Families within the Department of Health and
55 Human Resources, and were in effect on the date the
56 transfer occurred continue in effect, for the benefit of the
57 department, according to their terms until modified,
58 terminated, superseded, set aside or revoked in accordance
59 with the law by the Governor, the Secretary of the
60 Department of Health and Human Resources or other
61 authorized official, a court of competent jurisdiction or by
62 operation of law.

§49-6C-2. Family resource networks.

1 (a) "Family resource network" means a local community
2 organization charged with service coordination, needs and
3 resource assessment, planning, community mobilization and
4 evaluation, and which has been recognized by the cabinet as
5 having met the following criteria:

6 (1) Agreeing to a single governing entity;

7 (2) Agreeing to engage in activities to improve service
8 systems for children and families within the community;

9 (3) Addressing a geographic area of a county or two or
10 more contiguous counties;

11 (4) Having nonproviders, which include family
12 representatives and other members who are not employees
13 of publicly funded agencies, as the majority of the members
14 of the governing body, and having family representatives as
15 the majority of the nonproviders;

16 (5) Having representatives of local service agencies,
17 including, but not limited to, the public health department,
18 the behavioral health center, the local health and human
19 resources agency and the county school district, on the
20 governing body;

21 (6) Accepting principles consistent with the cabinet's
22 mission as part of its philosophy.

23 (b) A family resource network may not provide direct
24 services, which means to provide programs or services
25 directly to children and families.

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-3. Clearinghouse function.

1 (a) The Missing Children Information Clearinghouse is
2 established under the West Virginia State Police. The State
3 Police:

4 (1) Shall provide for the administration of the
5 clearinghouse; and

6 (2) May promulgate rules in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code to carry out the provisions of this article.

9 (b) The clearinghouse is a central repository of
10 information on missing children and shall be used by all
11 law-enforcement agencies in this state.

12 (c) The clearinghouse shall:

13 (1) Establish a system of intrastate communication of
14 information relating to missing children;

15 (2) Provide a centralized file for the exchange of
16 information on missing children and unidentified bodies of
17 children within the state;

18 (3) Communicate with the National Crime Information
19 Center for the exchange of information on missing children
20 suspected of interstate travel;

21 (4) Collect, process, maintain and disseminate accurate
22 and complete information on missing children;

23 (5) Provide a statewide toll-free telephone line for the
24 reporting of missing children and for receiving information
25 on missing children;

26 (6) Disseminate to custodians, law-enforcement
27 agencies, the state Department of Education, the Bureau for
28 Children and Families and the general public information
29 that explains how to prevent child abduction and what to do
30 if a child becomes missing;

31 (7) Compile statistics relating to the incidence of
32 missing children within the state;

33 (8) Provide training materials and technical assistance to
34 law-enforcement agencies and social services agencies
35 pertaining to missing children; and

36 (9) Establish a media protocol for disseminating
37 information pertaining to missing children.

38 (d) The clearinghouse shall print and distribute posters,
39 flyers and other forms of information containing
40 descriptions of missing children.

41 (e) The State Police may accept public or private grants,
42 gifts and donations to assist in carrying out the provisions of
43 this article.

**§49-9-15. Clearinghouse Advisory Council; members,
appointments and expenses; appointment,
duties and compensation of director.**

1 (a) The Clearinghouse Advisory Council is continued as
2 a body corporate and politic, constituting a public
3 corporation and government instrumentality. The council
4 shall consist of eleven members, who are knowledgeable
5 about and interested in issues relating to missing or
6 exploited children, as follows:

7 (1) Six members to be appointed by the Governor, with
8 the advice and consent of the Senate, with not more than
9 four belonging to the same political party, three being from
10 different congressional districts of the state and, as nearly as
11 possible, providing broad state geographical distribution of
12 members of the council, and at least one representing a
13 nonprofit organization involved with preventing the
14 abduction, runaway or exploitation of children or locating
15 missing children;

16 (2) The Secretary of the Department of Health and
17 Human Resources or his or her designee;

18 (3) The Superintendent of the West Virginia State Police
19 or his or her designee;

20 (4) The State Superintendent of Schools or his or her
21 designee;

22 (5) The Director of the Criminal Justice and Highway
23 Safety Division or his or her designee; and

24 (6) The Commissioner of the Bureau for Children and
25 Families or his or her designee.

26 (b) The Governor shall appoint the six council members
27 for staggered terms. The terms of the members first taking
28 office on or after the effective date of this legislation shall
29 expire as designated by the Governor. Each subsequent
30 appointment shall be for a full three-year term. Any
31 appointed member whose term is expired shall serve until a
32 successor has been duly appointed and qualified. Any
33 person appointed to fill a vacancy shall serve only for the
34 unexpired term. A member is eligible for only one
35 successive reappointment. A vacancy shall be filled by the
36 Governor in the same manner as the original appointment
37 was made.

38 (c) Members of the council are not entitled to
39 compensation for services performed as members but are
40 entitled to reimbursement for all reasonable and necessary
41 expenses actually incurred in the performance of their duties
42 in a manner consistent with the guidelines of the Travel
43 Management Office of the Department of Administration.

44 (d) A majority of serving members constitutes a quorum
45 for the purpose of conducting business. The chair of the

46 council shall be designated by the Governor from among the
47 appointed council members who represent nonprofit
48 organizations involved with preventing the abduction,
49 runaway or exploitation of children or locating missing
50 children. The term of the chair shall run concurrently with
51 his or her term of office as a member of the council. The
52 council shall conduct all meetings in accordance with the
53 open governmental meetings law pursuant to article nine-a,
54 chapter six of this code.

55 (e) The employee of the West Virginia State Police who
56 is primarily responsible for the clearinghouse established by
57 section three of this article shall serve as the executive
58 director of the council. He or she shall receive no additional
59 compensation for service as the executive director of the
60 council but shall be reimbursed for any reasonable and
61 necessary expenses actually incurred in the performance of
62 his or her duties as executive director in a manner consistent
63 with the guidelines of the Travel Management Office of the
64 Department of Administration.

65 (f) The expenses of council members and the executive
66 director shall be reimbursed from funds provided by
67 foundation grants, in-kind contributions or funds obtained
68 pursuant to subsection (b), section seventeen of this article.

69 (g) The executive director shall provide or obtain
70 information necessary to support the administrative work of
71 the council and, to that end, may contract with one or more
72 nonprofit organizations or state agencies for research and
73 administrative support.

74 (h) The executive director of the council shall be
75 available to the Governor and to the Speaker of the House of
76 Delegates and the President of the Senate to analyze and
77 comment upon proposed legislation and rules which relate
78 to or materially affect missing or exploited children.

79 (i) The council shall prepare and publish an annual
80 report of its activities and accomplishments and submit it to
81 the Governor and to the Joint Committee on Government
82 and Finance on or before the fifteenth day of December of
83 each year.

CHAPTER 10

**(Com. Sub. for S.B. 2005 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend and reenact §18B-1B-3 and §18B-1B-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-2B-5 of said code; to amend and reenact §18B-6-1 of said code; and to amend and reenact §18B-9-4 of said code, all relating to higher education generally; Higher Education Policy Commission; authorizing the Higher Education Policy Commission to convey real property; West Virginia Council for Community and Technical College Education; institutional boards of governors and institutional boards of advisors; providing for election of officers; terms of office; meetings; authorizing institutions to provide salary increases if funds are available for certain classified employees under certain circumstances; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18B-1B-3 and §18B-1B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 of

said code be amended and reenacted; that §18B-2B-5 of said code be amended and reenacted; that §18B-6-1 of said code be amended and reenacted; and that §18B-9-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-3. Meetings and compensation.

1 (a) The commission shall meet as needed at the time
2 and place specified by the call of the chairperson.

3 (b) The commission shall hold an annual meeting at the
4 final, regularly scheduled meeting of each fiscal year for the
5 purpose of electing officers. At the annual meeting, the
6 commission shall elect from its members appointed by the
7 Governor a chairperson and other officers as it may consider
8 necessary or desirable. All officers are elected from the
9 citizen appointees. The chairperson and other officers are
10 elected for a one-year term commencing on the first day of
11 July following the annual meeting and ending on the
12 thirtieth day of June of the following year. The chairperson
13 of the commission may serve no more than four consecutive
14 terms as chair.

15 (c) Members of the commission shall be reimbursed for
16 actual and necessary expenses incident to the performance
17 of their duties upon presentation of an itemized sworn
18 statement thereof. The foregoing reimbursement for actual
19 and necessary expenses shall be paid from appropriations
20 made by the Legislature to the commission.

21 (d) A majority of the members constitutes a quorum for
22 conducting the business of the commission.

**§18B-1B-4. Powers and duties of Higher Education Policy
Commission.**

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve
3 the goals and objectives found in section one-a, article one
4 of this chapter. The commission shall exercise its authority
5 and carry out its responsibilities in a manner that is
6 consistent and not in conflict with the powers and duties
7 assigned by law to the West Virginia Council for
8 Community and Technical College Education and the
9 powers and duties assigned to the governing boards of
10 Marshall University and West Virginia University,
11 respectively. To that end, the commission has the following
12 powers and duties relating to the institutions under its
13 jurisdiction:

14 (1) Develop, oversee and advance the public policy
15 agenda pursuant to section one, article one-a of this chapter
16 to address major challenges facing the state, including, but
17 not limited to, the goals and objectives found in section
18 one-a, article one of this chapter and including specifically
19 those goals and objectives pertaining to the compacts
20 created pursuant to section two, article one-a of this chapter
21 and to develop and implement the master plan described in
22 section nine of this article for the purpose of accomplishing
23 the mandates of this section;

24 (2) Develop, oversee and advance the implementation
25 jointly with the council of a financing policy for higher
26 education in West Virginia. The policy shall meet the
27 following criteria:

28 (A) Provide an adequate level of education and general
29 funding for institutions pursuant to section five, article one-a
30 of this chapter;

31 (B) Serve to maintain institutional assets, including, but
32 not limited to, human and physical resources and deferred
33 maintenance;

34 (C) Invest and provide incentives for achieving the
35 priority goals in the public policy agenda, including, but not
36 limited to, those found in section one-a, article one of this
37 chapter; and

38 (D) Incorporate the plan for strategic funding to
39 strengthen capacity for support of community and technical
40 college education established by the West Virginia Council
41 for Community and Technical College Education pursuant
42 to the provisions of section six, article two-b of this chapter;

43 (3) In collaboration with the council, create a policy
44 leadership structure capable of the following actions:

45 (A) Developing, building public consensus around and
46 sustaining attention to a long-range public policy agenda. In
47 developing the agenda, the commission and council shall
48 seek input from the Legislature and the Governor and
49 specifically from the State Board of Education and local
50 school districts in order to create the necessary linkages to
51 assure smooth, effective and seamless movement of students
52 through the public education and post-secondary education
53 systems and to ensure that the needs of public school
54 courses and programs can be fulfilled by the graduates
55 produced and the programs offered;

56 (B) Ensuring that the governing boards carry out their
57 duty effectively to govern the individual institutions of
58 higher education; and

59 (C) Holding the higher education institutions and the
60 higher education systems as a whole accountable for
61 accomplishing their missions and implementing the
62 provisions of the compacts;

63 (4) Develop and adopt each institutional compact;

64 (5) Review and adopt the annual updates of the
65 institutional compacts;

66 (6) Serve as the accountability point to:

67 (A) The Governor for implementation of the public
68 policy agenda; and

69 (B) The Legislature by maintaining a close working
70 relationship with the legislative leadership and the
71 Legislative Oversight Commission on Education
72 Accountability;

73 (7) Jointly with the council, promulgate legislative rules
74 pursuant to article three-a, chapter twenty-nine-a of this
75 code to fulfill the purposes of section five, article one-a of
76 this chapter;

77 (8) Establish and implement a peer group for each
78 institution as described in section three, article one-a of this
79 chapter;

80 (9) Establish and implement the benchmarks and
81 performance indicators necessary to measure institutional
82 achievement towards state policy priorities and institutional
83 missions pursuant to section two, article one-a of this
84 chapter;

85 (10) Annually report to the Legislature and to the
86 Legislative Oversight Commission on Education
87 Accountability during the January interim meetings on a
88 date and at a time and location to be determined by the
89 President of the Senate and the Speaker of the House of
90 Delegates. The report shall address at least the following:

91 (A) The performance of its system of higher education
92 during the previous fiscal year, including, but not limited to,

93 progress in meeting goals stated in the compacts and
94 progress of the institutions and the higher education system
95 as a whole in meeting the goals and objectives set forth in
96 section one-a, article one of this chapter;

97 (B) An analysis of enrollment data collected pursuant to
98 section one, article ten of this chapter and recommendations
99 for any changes necessary to assure access to high-quality,
100 high-demand education programs for West Virginia
101 residents;

102 (C) The priorities established for capital investment
103 needs pursuant to subdivision (11) of this subsection and the
104 justification for such priority;

105 (D) Recommendations of the commission for statutory
106 changes needed to further the goals and objectives set forth
107 in section one-a, article one of this chapter;

108 (11) Establish a formal process for identifying needs for
109 capital investments and for determining priorities for these
110 investments for consideration by the Governor and the
111 Legislature as part of the appropriation request process. It
112 is the responsibility of the commission to assure a fair
113 distribution of funds for capital projects between the
114 commission and the council. To that end the commission
115 shall take the following steps:

116 (A) Receive the list of priorities developed by the
117 council for capital investment for the institutions under the
118 council's jurisdiction pursuant to subsection (b), section six,
119 article two-b of this chapter;

120 (B) Place the ranked list of projects on the agenda for
121 action within sixty days of the date on which the list was
122 received;

123 (C) Select a minimum of three projects from the list
124 submitted by the council to be included on the ranked list
125 established by the commission. At least one of the three
126 projects selected must come from the top two priorities
127 established by the council;

128 (12) Maintain guidelines for institutions to follow
129 concerning extensive capital project management except the
130 governing boards of Marshall University and West Virginia
131 University are not subject to the provisions of this
132 subdivision as it relates to the state institutions of higher
133 education known as Marshall University and West Virginia
134 University. The guidelines shall provide a process for
135 developing capital projects, including, but not limited to, the
136 notification by an institution to the commission of any
137 proposed capital project which has the potential to exceed
138 one million dollars in cost. Such a project may not be
139 pursued by an institution without the approval of the
140 commission. An institution may not participate directly or
141 indirectly with any public or private entity in any capital
142 project which has the potential to exceed one million dollars
143 in cost;

144 (13) Acquire legal services as are considered necessary,
145 including representation of the commission, its institutions,
146 employees and officers before any court or administrative
147 body, notwithstanding any other provision of this code to
148 the contrary. The counsel may be employed either on a
149 salaried basis or on a reasonable fee basis. In addition, the
150 commission may, but is not required to, call upon the
151 Attorney General for legal assistance and representation as
152 provided by law;

153 (14) Employ a Chancellor for Higher Education
154 pursuant to section five of this article;

155 (15) Employ other staff as necessary and appropriate to
156 carry out the duties and responsibilities of the commission

157 and the council, in accordance with the provisions of article
158 four of this chapter;

159 (16) Provide suitable offices in Charleston for the
160 chancellor, vice chancellors and other staff;

161 (17) Advise and consent in the appointment of the
162 presidents of the institutions of higher education under its
163 jurisdiction pursuant to section six of this article. The role
164 of the commission in approving an institutional president is
165 to assure through personal interview that the person selected
166 understands and is committed to achieving the goals and
167 objectives as set forth in the institutional compact and in
168 section one-a, article one of this chapter;

169 (18) Approve the total compensation package from all
170 sources for presidents of institutions under its jurisdiction,
171 as proposed by the governing boards. The governing boards
172 must obtain approval from the commission of the total
173 compensation package both when institutional presidents are
174 employed initially and afterward when any change is made
175 in the amount of the total compensation package;

176 (19) Establish and implement the policy of the state to
177 assure that parents and students have sufficient information
178 at the earliest possible age on which to base academic
179 decisions about what is required for students to be
180 successful in college, other post-secondary education and
181 careers related, as far as possible, to results from current
182 assessment tools in use in West Virginia;

183 (20) Approve and implement a uniform standard jointly
184 with the council to determine which students shall be placed
185 in remedial or developmental courses. The standard shall be
186 aligned with college admission tests and assessment tools
187 used in West Virginia and shall be applied uniformly by the
188 governing boards throughout the public higher education

189 system. The chancellors shall develop a clear, concise
190 explanation of the standard which they shall communicate
191 to the State Board of Education and the State Superintendent
192 of Schools;

193 (21) Review and approve or disapprove capital projects
194 as described in subdivision (11) of this subsection;

195 (22) Jointly with the council, develop and implement an
196 oversight plan to manage systemwide technology such as
197 the following:

198 (A) Expanding distance learning and technology
199 networks to enhance teaching and learning, promote access
200 to quality educational offerings with minimum duplication
201 of effort; and

202 (B) Increasing the delivery of instruction to
203 nontraditional students, to provide services to business and
204 industry and increase the management capabilities of the
205 higher education system.

206 (C) Notwithstanding any other provision of law or this
207 code to the contrary, the council, commission and state
208 institutions of higher education are not subject to the
209 jurisdiction of the Chief Technology Officer for any
210 purpose;

211 (23) Establish and implement policies and procedures to
212 ensure that students may transfer and apply toward the
213 requirements for a bachelor's degree the maximum number
214 of credits earned at any regionally accredited in-state or
215 out-of-state community and technical college with as few
216 requirements to repeat courses or to incur additional costs as
217 is consistent with sound academic policy;

218 (24) Establish and implement policies and procedures to
219 ensure that students may transfer and apply toward the

220 requirements for a degree the maximum number of credits
221 earned at any regionally accredited in-state or out-of-state
222 higher education institution with as few requirements to
223 repeat courses or to incur additional costs as is consistent
224 with sound academic policy;

225 (25) Establish and implement policies and procedures to
226 ensure that students may transfer and apply toward the
227 requirements for a master's degree the maximum number of
228 credits earned at any regionally accredited in-state or
229 out-of-state higher education institution with as few
230 requirements to repeat courses or to incur additional costs as
231 is consistent with sound academic policy;

232 (26) Establish and implement policies and programs, in
233 cooperation with the council and the institutions of higher
234 education, through which students who have gained
235 knowledge and skills through employment, participation in
236 education and training at vocational schools or other
237 education institutions, or internet-based education programs,
238 may demonstrate by competency-based assessment that they
239 have the necessary knowledge and skills to be granted
240 academic credit or advanced placement standing toward the
241 requirements of an associate degree or a bachelor's degree
242 at a state institution of higher education;

243 (27) Seek out and attend regional, national and
244 international meetings and forums on education and
245 workforce development-related topics, as in the
246 commission's discretion is critical for the performance of
247 their duties as members, for the purpose of keeping abreast
248 of education trends and policies to aid it in developing the
249 policies for this state to meet the established education goals
250 and objectives pursuant to section one-a, article one of this
251 chapter;

252 (28) Develop, establish and implement a rule for higher
253 education governing boards and institutions to follow when

254 considering capital projects. The guidelines shall assure that
255 the governing boards and institutions do not approve or
256 promote capital projects involving private sector businesses
257 which would have the effect of reducing property taxes on
258 existing properties or avoiding, in whole or in part, the full
259 amount of taxes which would be due on newly developed or
260 future properties;

261 (29) Consider and submit to the appropriate agencies of
262 the executive and legislative branches of state government
263 a budget that reflects recommended appropriations from the
264 commission and the institutions under its jurisdiction. The
265 commission shall submit as part of its budget proposal the
266 separate recommended appropriations it received from the
267 council, both for the council and the institutions under the
268 council's jurisdiction. The commission annually shall
269 submit the proposed institutional allocations based on each
270 institution's progress toward meeting the goals of its
271 institutional compact;

272 (30) The commission has the authority to assess
273 institutions under its jurisdiction, including the state
274 institutions of higher education known as Marshall
275 University and West Virginia University, for the payment of
276 expenses of the commission or for the funding of statewide
277 higher education services, obligations or initiatives related
278 to the goals set forth for the provision of public higher
279 education in the state;

280 (31) Promulgate rules allocating reimbursement of
281 appropriations, if made available by the Legislature, to
282 institutions of higher education for qualifying noncapital
283 expenditures incurred in the provision of services to students
284 with physical, learning or severe sensory disabilities;

285 (32) Make appointments to boards and commissions
286 where this code requires appointments from the State

287 College System Board of Directors or the University of
288 West Virginia System Board of Trustees which were
289 abolished effective the thirtieth day of June, two thousand,
290 except in those cases where the required appointment has a
291 specific and direct connection to the provision of
292 community and technical college education, the appointment
293 shall be made by the council. Notwithstanding any
294 provisions of this code to the contrary, the commission or
295 the council may appoint one of its own members or any
296 other citizen of the state as its designee. The commission
297 and council shall appoint the total number of persons in the
298 aggregate required to be appointed by these previous
299 governing boards;

300 (33) Pursuant to the provisions of article three-a, chapter
301 twenty-nine-a of this code and section six, article one of this
302 chapter, promulgate rules as necessary or expedient to fulfill
303 the purposes of this chapter. The commission and the
304 council shall promulgate a uniform joint legislative rule for
305 the purpose of standardizing, as much as possible, the
306 administration of personnel matters among the institutions
307 of higher education;

308 (34) Determine when a joint rule among the governing
309 boards of the institutions under its jurisdiction is necessary
310 or required by law and, in those instances, in consultation
311 with the governing boards of all the institutions under its
312 jurisdiction, promulgate the joint rule;

313 (35) In consultation with the governing boards of
314 Marshall University and West Virginia University,
315 implement a policy jointly with the council whereby course
316 credit earned at a community and technical college transfers
317 for program credit at any other state institution of higher
318 education and is not limited to fulfilling a general education
319 requirement;

320 (36) Promulgate a joint rule with the council
321 establishing tuition and fee policy for all institutions of
322 higher education, other than state institutions of higher
323 education known as Marshall University and West Virginia
324 University which are subject to the provisions of section
325 one, article ten of this chapter. The rule shall include, but is
326 not limited to, the following:

327 (A) Comparisons with peer institutions;

328 (B) Differences among institutional missions;

329 (C) Strategies for promoting student access;

330 (D) Consideration of charges to out-of-state students;
331 and

332 (E) Such other policies as the commission and council
333 consider appropriate;

334 (37) Implement general disease awareness initiatives to
335 educate parents and students, particularly dormitory
336 residents, about meningococcal meningitis; the potentially
337 life-threatening dangers of contracting the infection;
338 behaviors and activities that can increase risks; measures
339 that can be taken to prevent contact or infection; and
340 potential benefits of vaccination. The commission shall
341 encourage institutions that provide medical care to students
342 to provide access to the vaccine for those who wish to
343 receive it; and

344 (38) Notwithstanding any other provision of this code to
345 the contrary, sell, lease, convey or otherwise dispose of all
346 or part of any real property which it may own, either by
347 contract or at public auction, and to retain the proceeds of
348 any such sale or lease: *Provided*, That:

349 (A) The commission may not sell, lease, convey or
350 otherwise dispose of any real property without first:

351 (i) Providing notice to the public in the county in which
352 the real property is located by a Class II legal advertisement
353 pursuant to section two, article three, chapter fifty-nine of
354 this code;

355 (ii) Holding a public hearing on the issue in the county
356 in which the real property is located; and

357 (iii) Providing notice to the Joint Committee on
358 Government and Finance; and

359 (B) Any proceeds from the sale, lease, conveyance or
360 other disposal of real property that is used jointly by
361 institutions or for statewide programs under the jurisdiction
362 of the commission or the council shall be transferred to the
363 General Revenue Fund of the state.

364 (b) In addition to the powers and duties listed in
365 subsection (a) of this section, the commission has the
366 following general powers and duties related to its role in
367 developing, articulating and overseeing the implementation
368 of the public policy agenda:

369 (1) Planning and policy leadership, including a distinct
370 and visible role in setting the state's policy agenda and in
371 serving as an agent of change;

372 (2) Policy analysis and research focused on issues
373 affecting the system as a whole or a geographical region
374 thereof;

375 (3) Development and implementation of institutional
376 mission definitions, including use of incentive funds to
377 influence institutional behavior in ways that are consistent
378 with public priorities;

379 (4) Academic program review and approval for
380 institutions under its jurisdiction, including the use of
381 institutional missions as a template to judge the
382 appropriateness of both new and existing programs and the
383 authority to implement needed changes. The commission's
384 authority to review and approve academic programs for
385 either the state institution of higher education known as
386 Marshall University or West Virginia University is limited
387 to programs that are proposed to be offered at a new location
388 not presently served by that institution;

389 (5) Distribution of funds appropriated to the
390 commission, including incentive and performance-based
391 funding;

392 (6) Administration of state and federal student aid
393 programs under the supervision of the vice chancellor for
394 administration, including promulgation of any rules
395 necessary to administer those programs;

396 (7) Serving as the agent to receive and disburse public
397 funds when a governmental entity requires designation of a
398 statewide higher education agency for this purpose;

399 (8) Development, establishment and implementation of
400 information, assessment and accountability systems,
401 including maintenance of statewide data systems that
402 facilitate long-term planning and accurate measurement of
403 strategic outcomes and performance indicators;

404 (9) Jointly with the council, developing, establishing and
405 implementing policies for licensing and oversight for both
406 public and private degree-granting and nondegree-granting
407 institutions that provide post-secondary education courses or
408 programs in the state pursuant to the findings and policy
409 recommendations required by section eleven of this article;

410 (10) Development, implementation and oversight of
411 statewide and regionwide projects and initiatives related to
412 providing post-secondary education at the baccalaureate
413 level and above such as those using funds from federal
414 categorical programs or those using incentive and
415 performance-based funding from any source; and

416 (11) Quality assurance that intersects with all other
417 duties of the commission particularly in the areas of
418 research, data collection and analysis, planning, policy
419 analysis, program review and approval, budgeting and
420 information and accountability systems.

421 (c) In addition to the powers and duties provided in
422 subsections (a) and (b) of this section and any other powers
423 and duties as may be assigned to it by law, the commission
424 has such other powers and duties as may be necessary or
425 expedient to accomplish the purposes of this article.

426 (d) The commission is authorized to withdraw specific
427 powers of any governing board of an institution under its
428 jurisdiction for a period not to exceed two years, if the
429 commission makes a determination that:

430 (1) The governing board has failed for two consecutive
431 years to develop an institutional compact as required in
432 article one of this chapter;

433 (2) The commission has received information,
434 substantiated by independent audit, of significant
435 mismanagement or failure to carry out the powers and duties
436 of the board of governors according to state law; or

437 (3) Other circumstances which, in the view of the
438 commission, severely limit the capacity of the board of
439 governors to carry out its duties and responsibilities.

440 The period of withdrawal of specific powers may not
441 exceed two years during which time the commission is
442 authorized to take steps necessary to reestablish the
443 conditions for restoration of sound, stable and responsible
444 institutional governance.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) A board of governors is continued at each of the
2 following institutions: Bluefield State College, Blue Ridge
3 Community and Technical College, Concord University,
4 Eastern West Virginia Community and Technical College,
5 Fairmont State University, Glenville State College, Marshall
6 University, New River Community and Technical College,
7 Shepherd University, Southern West Virginia Community
8 and Technical College, West Liberty State College, West
9 Virginia Northern Community and Technical College, the
10 West Virginia School of Osteopathic Medicine, West
11 Virginia State University and West Virginia University.

12 (b) The institutional Board of Governors for Marshall
13 University consists of sixteen persons and the institutional
14 Board of Governors for West Virginia University consists of
15 eighteen persons. Each other board of governors consists of
16 twelve persons.

17 (c) Each board of governors includes the following
18 members:

19 (1) A full-time member of the faculty with the rank of
20 instructor or above duly elected by the faculty of the
21 respective institution;

22 (2) A member of the student body in good academic
23 standing, enrolled for college credit work and duly elected
24 by the student body of the respective institution;

25 (3) A member from the institutional classified
26 employees duly elected by the classified employees of the
27 respective institution; and

28 (4) For the institutional Board of Governors at Marshall
29 University, twelve lay members appointed by the Governor,
30 by and with the advice and consent of the Senate, pursuant
31 to this section and, additionally, the chairperson of the
32 institutional board of advisors of Marshall Community and
33 Technical College serving as an ex officio, voting member.

34 (5) For the institutional Board of Governors at West
35 Virginia University, twelve lay members appointed by the
36 Governor, by and with the advice and consent of the Senate,
37 pursuant to this section and, additionally, the chairpersons
38 of the following boards serving as ex officio, voting
39 members:

40 (A) The institutional board of advisors of:

41 (i) The Community and Technical College at West
42 Virginia University Institute of Technology; and

43 (ii) West Virginia University at Parkersburg; and

44 (B) The Board of Visitors of West Virginia University
45 Institute of Technology.

46 (6) For each institutional board of governors of an
47 institution that does not have an administratively linked
48 community and technical college under its jurisdiction, nine
49 lay members appointed by the Governor, by and with the
50 advice and consent of the Senate, pursuant to this section.

51 (7) For each institutional board of governors which has
52 an administratively linked community and technical college
53 under its jurisdiction:

54 (A) Eight lay members appointed by the Governor, by
55 and with the advice and consent of the Senate, pursuant to
56 this section and, additionally, the chairperson of the
57 institutional board of advisors of the administratively linked
58 community and technical college; and

59 (B) Of the eight lay members appointed by the
60 Governor, one shall be the superintendent of a county board
61 of education from the area served by the institution.

62 (d) Of the eight or nine members appointed by the
63 Governor, no more than five may be of the same political
64 party. Of the twelve members appointed by the Governor to
65 the governing boards of Marshall University and West
66 Virginia University, no more than seven may be of the same
67 political party. Of the eight or nine members appointed by
68 the Governor, at least six shall be residents of the state. Of
69 the twelve members appointed by the Governor to the
70 governing boards of Marshall University and West Virginia
71 University, at least eight shall be residents of the state.

72 (e) The student member serves for a term of one year.
73 Each term begins on the first day of July.

74 (f) The faculty member serves for a term of two years.
75 Each term begins on the first day of July. Faculty members
76 are eligible to succeed themselves for three additional terms,
77 not to exceed a total of eight consecutive years.

78 (g) The member representing classified employees
79 serves for a term of two years. Each term begins on the first
80 day of July. Members representing classified employees are
81 eligible to succeed themselves for three additional terms, not
82 to exceed a total of eight consecutive years.

83 (h) The appointed lay citizen members serve terms of
84 four years each and are eligible to succeed themselves for no
85 more than one additional term.

86 (i) A vacancy in an unexpired term of a member shall be
87 filled for the unexpired term within thirty days of the
88 occurrence of the vacancy in the same manner as the
89 original appointment or election. Except in the case of a
90 vacancy, all elections shall be held and all appointments
91 shall be made no later than the thirtieth day of June
92 preceding the commencement of the term. Each board of
93 governors shall elect one of its appointed lay members to be
94 chairperson in June of each year. A member may not serve
95 as chairperson for more than four consecutive years.

96 (j) The appointed members of the institutional boards of
97 governors serve staggered terms of four years.

98 (k) A person is ineligible for appointment to
99 membership on a board of governors of a state institution of
100 higher education under the following conditions:

101 (1) For a baccalaureate institution or university, a person
102 is ineligible for appointment who is an officer, employee or
103 member of any other board of governors, a member of an
104 institutional board of advisors of any public institution of
105 higher education, an employee of any institution of higher
106 education, an officer or member of any political party
107 executive committee, the holder of any other public office
108 or public employment under the government of this state or
109 any of its political subdivisions or a member of the council
110 or commission. This subsection does not prevent the
111 representative from the faculty, classified employees,
112 students or chairpersons of the boards of advisors or the
113 superintendent of a county board of education from being
114 members of the governing boards.

115 (2) For a community and technical college, a person is
116 ineligible for appointment who is an officer, employee or
117 member of any other board of governors; a member of an
118 institutional board of advisors of any public institution of
119 higher education; an employee of any institution of higher
120 education; an officer or member of any political party
121 executive committee; the holder of any other public office,
122 other than an elected county office, or public employment,
123 other than employment by the county board of education,
124 under the government of this state or any of its political
125 subdivisions; or a member of the council or commission.
126 This subsection does not prevent the representative from the
127 faculty, classified employees, students or chairpersons of the
128 boards of advisors from being members of the governing
129 boards.

130 (l) Before exercising any authority or performing any
131 duties as a member of a governing board, each member shall
132 qualify as such by taking and subscribing to the oath of
133 office prescribed by section five, article IV of the
134 Constitution of West Virginia and the certificate thereof
135 shall be filed with the Secretary of State.

136 (m) A member of a governing board appointed by the
137 Governor may not be removed from office by the Governor
138 except for official misconduct, incompetence, neglect of
139 duty or gross immorality and then only in the manner
140 prescribed by law for the removal of the state elective
141 officers by the Governor.

142 (n) The president of the institution shall make available
143 resources of the institution for conducting the business of its
144 board of governors. The members of the board of governors
145 serve without compensation, but are reimbursed for all
146 reasonable and necessary expenses actually incurred in the
147 performance of official duties under this article upon
148 presentation of an itemized sworn statement of expenses.

149 All expenses incurred by the board of governors and the
150 institution under this section are paid from funds allocated
151 to the institution for that purpose.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.**

§18B-2B-5. Meetings and compensation.

1 (a) The council shall meet as needed at the time and
2 place specified at the call of the chairperson. One meeting
3 each year shall be a public forum for the discussion of the
4 goals and standards for workforce development, economic
5 development and vocational education in the state.

6 (b) The council shall hold an annual meeting at its final,
7 regularly scheduled meeting of each fiscal year for the
8 purpose of electing officers. At the annual meeting, the
9 council shall elect from its voting members a chairperson
10 and other officers as it may consider necessary or desirable.
11 The chairperson and other officers are elected for one-year
12 terms commencing on the first day of July following the
13 annual meeting and ending on the thirtieth day of June of the
14 following year. The chairperson of the council may serve
15 no more than four consecutive one-year terms as chair.

16 (c) Members of the council serve without compensation.
17 Members shall be reimbursed for all reasonable and
18 necessary expenses actually incurred in the performance of
19 official duties under this article upon presentation of an
20 itemized sworn statement of their expenses. An ex officio
21 member of the council who is an employee of the state is
22 reimbursed by the employing agency.

23 (d) A majority of the voting members constitutes a
24 quorum for conducting the business of the council. All

25 action taken by the council shall be by majority vote of the
26 voting members present.

ARTICLE 6. ADVISORY COUNCILS AND BOARDS.

§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

1 (a) There are continued institutional boards of advisors
2 as follows:

3 (1) For each regional campus. The chairperson of the
4 board of advisors of West Virginia University at
5 Parkersburg serves as an ex officio, voting member of the
6 Governing Board of West Virginia University;

7 (2) For administratively linked community and technical
8 colleges which share a physical location with the sponsoring
9 institution. This category includes Marshall Community
10 and Technical College, West Virginia State Community and
11 Technical College and the Community and Technical
12 College at West Virginia University Institute of Technology.
13 The chairperson of the board of advisors of each
14 administratively linked community and technical college
15 serves as an ex officio, voting member of the sponsoring
16 institution's board of governors, or in the case of the
17 Community and Technical College at West Virginia
18 University Institute of Technology, the chairperson of the
19 board of advisors serves as an ex officio voting member of
20 the Governing Board of West Virginia University; and

21 (3) For Pierpont Community and Technical College.
22 The chairperson of the board of advisors of Pierpont
23 Community and Technical College serves as an ex officio,
24 voting member of the Fairmont State University Board of
25 Governors.

26 (b) The lay members of the institutional boards of
27 advisors for the regional campuses are appointed by the
28 board of governors.

29 (c) The lay members of the institutional boards of
30 advisors established for the administratively linked
31 community and technical colleges and Pierpont Community
32 and Technical College are appointed by the West Virginia
33 Council for Community and Technical College Education.

34 (d) The board of advisors consists of fifteen members,
35 including a full-time member of the faculty with the rank of
36 instructor or above duly elected by the faculty of the
37 respective institution; a member of the student body in good
38 academic standing, enrolled for college credit work and duly
39 elected by the student body of the respective institution; a
40 member from the institutional classified employees duly
41 elected by the classified employees of the respective
42 institution; and twelve lay persons appointed pursuant to this
43 section who have demonstrated a sincere interest in and
44 concern for the welfare of that institution and who are
45 representative of the population of its responsibility district
46 and fields of study. At least eight of the twelve lay persons
47 appointed shall be residents of the state. Of the lay
48 members who are residents of the state, at least two shall be
49 alumni of the respective institution and no more than a
50 simple majority may be of the same political party.

51 (e) The student member serves for a term of one year
52 beginning on the first day of May. The member from the
53 faculty and the classified employees, respectively, serves for
54 a term of two years beginning on the first day of May. The
55 twelve lay members serve terms of four years each
56 beginning on the first day of May. All members are eligible
57 to succeed themselves for no more than one additional term.
58 A vacancy in an unexpired term of a member shall be filled
59 for the remainder of the unexpired term within thirty days of

60 the occurrence thereof in the same manner as the original
61 appointment or election. Except in the case of a vacancy:

62 (1) All elections shall be held and all appointments shall
63 be made no later than the thirtieth day of April preceding the
64 commencement of the term; and

65 (2) Terms of members begin on the first day of May
66 following election.

67 (f) Each board of advisors shall hold a regular meeting
68 at least quarterly, commencing in May of each year.
69 Additional meetings may be held upon the call of the
70 chairperson, president of the institution or upon the written
71 request of at least five members. A majority of the members
72 constitutes a quorum for conducting the business of the
73 board of advisors.

74 (g) One of the twelve lay members shall be elected as
75 chairperson by the board of advisors in May of each year.
76 A member may not serve as chairperson for more than four
77 consecutive years.

78 (h) The president of the institution shall make available
79 resources of the institution for conducting the business of
80 the board of advisors. The members of the board of
81 advisors shall be reimbursed for all reasonable and
82 necessary expenses actually incurred in the performance of
83 their official duties under this section upon presentation of
84 an itemized sworn statement thereof. All expenses incurred
85 by the boards of advisors and the institutions under this
86 section shall be paid from funds allocated to the institutions
87 for that purpose.

88 (i) Prior to the submission by the president to its
89 governing board, the board of advisors shall review all
90 proposals of the institution in the areas of mission, academic

91 programs, budget, capital facilities and such other matters as
92 requested by the president of the institution or its governing
93 board or otherwise assigned to it by law. The board of
94 advisors shall comment on each such proposal in writing,
95 with such recommendations for concurrence therein or
96 revision or rejection thereof as it considers proper. The
97 written comments and recommendations shall accompany
98 the proposal to the governing board and the governing board
99 shall include the comments and recommendations in its
100 consideration of and action on the proposal. The governing
101 board shall promptly acknowledge receipt of the comments
102 and recommendations and shall notify the board of advisors
103 in writing of any action taken thereon.

104 (j) Prior to their implementation by the president, the
105 board of advisors shall review all proposals regarding
106 institutionwide personnel policies. The board of advisors
107 may comment on the proposals in writing.

108 (k) The board of advisors shall provide advice and
109 assistance to the president and the governing board in areas
110 including, but not limited to, the following:

111 (1) Establishing closer connections between higher
112 education and business, labor, government and community
113 and economic development organizations to give students
114 greater opportunities to experience the world of work.
115 Examples of such experiences include business and
116 community service internships, apprenticeships and
117 cooperative programs;

118 (2) Communicating better and serving the current
119 workforce and workforce development needs of their service
120 area, including the needs of nontraditional students for
121 college-level skills upgrading and retraining and the needs
122 of employers for specific programs of limited duration; and

123 (3) Assessing the performance of the institution's
124 graduates and assisting in job placement.

125 (1) When a vacancy occurs in the office of president of
126 the institution, the board of advisors shall serve as a search
127 and screening committee for candidates to fill the vacancy
128 under guidelines established by the council. When serving
129 as a search and screening committee, the board of advisors
130 and its governing board are each authorized to appoint up to
131 three additional persons to serve on the committee as long
132 as the search and screening process is in effect. The three
133 additional appointees of the board of advisors shall be
134 faculty members of the institution. For the purposes of the
135 search and screening process only, the additional members
136 shall possess the same powers and rights as the regular
137 members of the board of advisors, including reimbursement
138 for all reasonable and necessary expenses actually incurred.
139 Following the search and screening process, the committee
140 shall submit the names of at least three candidates to the
141 appropriate governing board. If the governing board rejects
142 all candidates submitted, the committee shall submit the
143 names of at least three additional candidates and this process
144 shall be repeated until the governing board approves one of
145 the candidates submitted. In all cases, the governing board
146 shall make the appointment with the approval of the council
147 or the commission in the case of West Virginia University
148 Institute of Technology. The governing board or the council
149 shall provide all necessary staff assistance to the board of
150 advisors in its role as a search and screening committee.
151 This subsection does not apply to Fairmont State University.
152 The President of Fairmont State University continues to be
153 appointed pursuant to the provisions of section six, article
154 one-b of this chapter.

155 (m) The boards of advisors shall develop a master plan
156 for those administratively linked community and technical
157 colleges which retain boards of advisors. The ultimate

158 responsibility for developing and updating the master plans
159 at the institutional level resides with the institutional board
160 of advisors, but the ultimate responsibility for approving the
161 final version of these institutional master plans, including
162 periodic updates, resides with the council. The plan shall
163 include, but not be limited to, the following:

164 (1) A detailed demonstration of how the master plan will
165 be used to meet the goals and objectives of the institutional
166 compact;

167 (2) A well-developed set of goals outlining missions,
168 degree offerings, resource requirements, physical plant
169 needs, personnel needs, enrollment levels and other planning
170 determinates and projections necessary in such a plan to
171 assure that the needs of the institution's area of
172 responsibility for a quality system of higher education are
173 addressed;

174 (3) Documentation of the involvement of the
175 commission, institutional constituency groups, clientele of
176 the institution and the general public in the development of
177 all segments of the institutional master plan.

178 The plan shall be established for periods of not less than
179 three nor more than six years and shall be revised
180 periodically as necessary, including recommendations on the
181 addition or deletion of degree programs as, in the discretion
182 of the board of advisors, may be necessary.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY
SCHEDULE AND CLASSIFICATION
SYSTEM.**

**§18B-9-4. Establishment of personnel classification system;
assignment to classification and to salary
schedule.**

1 (a) The commission shall implement an equitable system
2 of job classifications, with the advice and assistance of staff
3 councils and other groups representing classified employees,
4 each classification to consist of related job titles and
5 corresponding job descriptions for each position within a
6 classification, together with the designation of an
7 appropriate pay grade for each job title, which system shall
8 be the same for corresponding positions of the commission
9 and in institutions under all governing boards. The
10 equitable system of job classification and the rules
11 establishing it which were in effect immediately prior to the
12 effective date of this section are hereby transferred to the
13 jurisdiction and authority of the commission and shall
14 remain in effect unless modified or rescinded by the
15 commission.

16 (b) Any classified salary increases distributed within a
17 state institution of higher education after the first day of
18 July, two thousand one, shall be in accordance with the
19 uniform classification system and a uniform and equitable
20 salary policy adopted by each individual board of governors.
21 Each salary policy shall detail the salary goals of the
22 institution and the process whereby the institution will
23 achieve or progress toward achievement of placing each
24 classified employee at his or her minimum salary on the
25 schedule established pursuant to section three of this article.

26 (c) A classified employee may receive a salary in excess
27 of the salary established by the salary schedule for his or her
28 pay grade and years of experience only if all such
29 employees at the institution are receiving at least the
30 minimum salary for their pay grade and years of experience
31 as established for them by the salary schedule: *Provided,*
32 That any salary increase must be provided in a manner that
33 is consistent with the uniform classification system and the
34 institution's salary policy.

CHAPTER 11

**(H.B. 204 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 5, 2007.]

AN ACT to amend and reenact §62-1D-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-1F-1, §62-1F-2, §62-1F-3, §62-1F-4, §62-1F-5, §62-1F-6, §62-1F-7, §62-1F-8 and §62-1F-9, all relating to electronic interception of a nonconsenting party's conduct or oral communications in his or her home by an investigative or law-enforcement officer or an informant invited into said home; excepting electronic interceptions of a nonconsenting party's conduct or communications occurring in his or her home from the wiretapping and electronic surveillance act; providing definitions; requiring court order to perform electronic interception of a nonconsenting party's conduct or communications occurring in his or her home and exceptions thereto; providing for state supreme court to establish requirements for providing after hours availability of magistrates and judges; authorizing law enforcement to apply for interception orders and providing criteria therefor; authorizing magistrates and circuit court judges to issue electronic interception orders; setting forth requirements for electronic interception order applications; requiring orders setting forth information; setting forth scope and duration of orders; setting forth procedures for maintaining, disclosing and disposing of electronic intercepts; requiring recording and summaries of electronic intercepts; establishing requirements for custody and destruction of said recordings; placing

applications and orders under seal; authorizing use of information relating to other criminal violations under certain circumstances; placing restrictions on disclosure and use of electronically intercepted conduct and communications and related information derived therefrom; and providing for electronic intercepts in exigent circumstances without prior judicial approval subject to retroactive approval.

Be it enacted by the Legislature of West Virginia:

That §62-1D-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 article, designated §62-1F-1, §62-1F-2, §62-1F-3, §62-1F-4, §62-1F-5, §62-1F-6, §62-1F-7, §62-1F-8 and §62-1F-9, all to read as follows:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-3. Interception of communications generally.

1 (a) Except as otherwise specifically provided in this
2 article it is unlawful for any person to:

3 (1) Intentionally intercept, attempt to intercept or
4 procure any other person to intercept or attempt to intercept,
5 any wire, oral or electronic communication; or

6 (2) Intentionally disclose or intentionally attempt to
7 disclose to any other person the contents of any wire, oral or
8 electronic communication, knowing or having reason to
9 know that the information was obtained through the
10 interception of a wire, oral or electronic communication in
11 violation of this article; and

12 (3) Intentionally use or disclose or intentionally attempt
13 to use or disclose the contents of any wire, oral or electronic

14 communication or the identity of any party thereto, knowing
15 or having reason to know that such information was
16 obtained through the interception of a wire, oral or
17 electronic communication in violation of this article.

18 (b) Any person who violates subsection (a) of this
19 section is guilty of a felony and, upon conviction thereof,
20 shall be imprisoned in the penitentiary for not more than
21 five years or fined not more than ten thousand dollars or
22 both fined and imprisoned.

23 (c) It is lawful under this article for an operator of a
24 switchboard or an officer, employee, or provider of any wire
25 or electronic communication service whose facilities are
26 used in the transmission of a wire communication to
27 intercept, disclose or use that communication or the identity
28 of any party to that communication in the normal course of
29 his or her employment while engaged in any activity which
30 is a necessary incident to the rendition of his or her service
31 or to the protection of the rights or property of the carrier of
32 the communication. Providers of wire or electronic
33 communication services may not utilize service observing or
34 random monitoring except for mechanical or service quality
35 control checks.

36 (d) Notwithstanding any other law, any provider of wire
37 or electronic communications services, or the directors,
38 officers, employees, agents, landlords or custodians of any
39 such provider, are authorized to provide information,
40 facilities or technical assistance to persons authorized by
41 this article to intercept wire, oral or electronic
42 communication if such provider or its directors, officers,
43 employees, agents, landlords or custodians has been
44 provided with a duly certified copy of a court order directing
45 such assistance and setting forth the period of time during
46 which the provision of the information, facilities, or
47 technical assistance is authorized and specifying the

48 information, facilities or assistance required. No cause of
49 action shall lie in any court against any such provider of
50 wire or electronic communication services, its directors,
51 officers, agents, landlords or custodians for providing
52 information facilities or assistance in accordance with the
53 terms of any such order.

54 (e) It is lawful under this article for a person to intercept
55 a wire, oral or electronic communication where the person
56 is a party to the communication or where one of the parties
57 to the communication has given prior consent to the
58 interception unless the communication is intercepted for the
59 purpose of committing any criminal or tortious act in
60 violation of the constitution or laws of the United States or
61 the constitution or laws of this state:

62 (f) Notwithstanding the provisions of this article or any
63 other provision of law, an electronic interception as defined
64 by section one, article one-f of this chapter, is regulated
65 solely by the provisions of article one-f of this chapter, and
66 no penalties or other requirements of this article are
67 applicable.

**ARTICLE 1F. ELECTRONIC INTERCEPTION OF
PERSON'S CONDUCT OR ORAL
COMMUNICATIONS IN HOME BY
LAW ENFORCEMENT.**

§62-1F-1. Definitions.

1 (a) For the purposes of this article, the following terms
2 have the following meanings:

3 (1) "Body wire" means: (a) An audio and/or video
4 recording device surreptitiously carried on or under the
5 control of an investigative or law-enforcement officer or
6 informant to simultaneously record a nonconsenting party's

7 conduct or oral communications; or (2) radio equipment
8 surreptitiously carried on or under the control of an
9 investigative or law-enforcement officer or informant to
10 simultaneously transmit a nonconsenting party's conduct or
11 oral communications to recording equipment located
12 elsewhere or to other law-enforcement officers monitoring
13 the radio transmitting frequency.

14 (2) "Home" means the residence of a nonconsenting
15 party to an electronic interception, provided that access to
16 the residence is not generally permitted to members of the
17 public and the nonconsenting party has a reasonable
18 expectation of privacy in the residence under the
19 circumstances.

20 (3) "Informant" means a person acting in concert with
21 and at the direction of a law-enforcement officer in the
22 investigation of possible violations of the criminal laws of
23 this state or the United States.

24 (4) "Investigative or law-enforcement officer" means
25 any officer empowered by law to conduct investigations of
26 or to make arrests for criminal offenses enumerated in this
27 code or an equivalent offense in another jurisdiction.

28 (5) "Electronically intercept" or "electronic
29 interception" mean the simultaneous recording with a body
30 wire of a nonconsenting party's conduct or oral
31 communications in his or her home by an investigative or
32 law-enforcement officer or informant who is invited into the
33 home and physically present with the nonconsenting party
34 in the home at the time of the recording.

35 (b) Words and phrases that are not defined in this
36 article, but which are defined in article one-d of this chapter,
37 shall have the same meanings established in article one-d
38 unless otherwise noted.

§62-1F-2. Electronic interception of conduct or oral communications in the home authorized.

1 (a) Prior to engaging in electronic interception, as
2 defined in section one of this article, an investigative or law-
3 enforcement officer shall, in accordance with this article,
4 first obtain from a magistrate or a judge of a circuit court
5 within the county wherein the nonconsenting party's home
6 is located an order authorizing said interception. The order
7 shall be based upon an affidavit by the investigative or law-
8 enforcement officer or an informant that establishes
9 probable cause that the interception would provide evidence
10 of the commission of a crime under the laws of this state or
11 the United States.

12 (b) The Legislature hereby requests the Supreme Court
13 of Appeals to promptly undertake all necessary actions and
14 promulgate any requisite rules to assure a magistrate or
15 circuit judge is available after normal business hours to
16 authorize warrants.

§62-1F-3. Application for an order authorizing interception.

1 (a) Each application for an order authorizing electronic
2 interception in accordance with the provisions of this article
3 shall be made only to the magistrate or judge of the circuit
4 court by petition in writing upon oath or affirmation and
5 shall state the applicant's authority to make the application.
6 Each application shall set forth the following:

7 (1) The identity of the investigative or law-enforcement
8 officer making the application, and of the person authorizing
9 the application, who shall be the head of the investigative or
10 law-enforcement agency or an officer of the investigative or
11 law enforcement agency designated in writing by the head
12 of that agency: *Provided*, That an application made by a
13 member of the State Police or an officer assigned to a

14 multijurisdictional task force authorized under section four,
15 article ten, chapter fifteen of this code also may be
16 authorized by the supervisor of that member or officer if the
17 supervisor holds a rank of sergeant or higher;

18 (2) A full and complete statement of the facts and
19 circumstances relied upon by the applicant, to justify his or
20 her belief that an order should be issued, including (i) details
21 as to the particular offense that has been, is being, or is
22 about to be committed, (ii) a description of the person whose
23 conduct or communications are sought to be intercepted and
24 a particular description of the home at which it is anticipated
25 that the interception would occur: *Provided*, That the
26 description of the home may be omitted where there is good
27 cause to believe that the location is subject to change, (iii) a
28 particular description of the type of conduct or
29 communications sought to be intercepted, and (iv) the
30 identity of the person, if known, committing the offense and
31 whose conduct or communications are to be intercepted;

32 (3) A statement of the period of time for which the
33 interception is required to be maintained. If the nature of the
34 investigation is such that the authorization for interception
35 should not automatically terminate when the described
36 conduct or communication has been first obtained, a
37 particular description of facts establishing probable cause to
38 believe additional conduct or communications of the same
39 type will occur thereafter; and

40 (4) Where the application is for the extension of an
41 order, a statement setting forth the results obtained pursuant
42 to such order from the interception or a reasonable
43 explanation of the failure to obtain any such results.

44 (b) The magistrate or judge of the circuit court may
45 require the applicant to furnish additional testimony or
46 documentary evidence in support of the application.

47 (c) Notwithstanding the provisions of subsection (a) of
48 this section, the magistrate or judge may take an oral
49 statement under oath in which the applicant must set forth
50 the information required in subsection (a) of this section.
51 The applicant shall swear the oath by telephone. A
52 magistrate or judge administering an oath telephonically
53 under this subsection shall execute a declaration that recites
54 the manner and time of the oath's administration. The oral
55 statement shall be recorded. The recording shall be
56 considered to be an application for the purposes of this
57 section. In such cases, the recording of the sworn oral
58 statement and the transcribed statement shall be certified by
59 the magistrate or judge receiving it and shall be retained as
60 a part of the record of proceedings for the issuance of the
61 order.

§62-1F-4. Order authorizing interception.

1 (a) Upon application filed pursuant to the provisions of
2 section three of this article, the magistrate or judge of the
3 circuit court may enter an ex parte order, as requested or as
4 modified or moulded, authorizing an electronic interception
5 in a home if the magistrate or judge determines on the basis
6 of the evidence and argument presented by the applicant
7 that:

8 (1) There is probable cause to believe that one or more
9 individuals are committing, have committed, or are about to
10 commit one or more specified crimes under the laws of this
11 state or the United States will be obtained through
12 interception; and

13 (2) There is probable cause to believe that the home
14 where the electronic interception is to occur is being used,
15 or is about to be used, in connection with the commission of
16 the offense, or offenses: *Provided*, That such determination
17 shall not be required where the identity of the person

18 committing the offense and whose conduct or
19 communications are to be intercepted is known, and the
20 applicant makes an adequate showing as required pursuant
21 to paragraph (ii), subdivision two, subsection (a), section
22 three of this article that the location cannot be
23 predetermined.

24 (b) Each order authorizing an electronic interception in
25 accordance with the provisions of this article shall specify:
26 (i) the identity of the person, if known, whose conduct or
27 communications are to be intercepted, (ii) the nature and
28 location of the home for which authority to intercept is
29 granted, if necessary under subdivision three, subsection (a)
30 of this section, (iii) a particular description of the type of
31 conduct or communications sought to be intercepted and a
32 statement of the particular offense to which it relates, (iv)
33 the identity of the law-enforcement officer or officers
34 applying for authorization to electronically intercept and of
35 the officer authorizing the application, and (v) the period of
36 time during which the interception is authorized, including
37 a statement as to whether or not the interception
38 automatically terminates when the described conduct or
39 communication is first obtained.

40 (c) An order entered pursuant to the provisions of this
41 section may authorize the electronic interception for a period
42 of time that is necessary to achieve the objective of the
43 authorization, not to exceed twenty days. Such twenty-day
44 period begins on the day the order is entered. Extensions of
45 an order may be granted, but only upon application for an
46 extension made as provided in subsection (a) of this section
47 and upon the magistrate or judge of the circuit court making
48 the findings required by subsection (b) of this section. The
49 period of extension may be no longer than the magistrate or
50 judge deems necessary to achieve the purposes for which it
51 was granted and, in no event, for longer than twenty days.
52 Every order and extension thereof shall contain a provision

53 that the authorization to electronically intercept be executed
54 as soon as practicable, be conducted in such a way as to
55 minimize the interception of conduct or communications not
56 otherwise subject to interception under this article and
57 terminate upon attainment of the authorized objective, or in
58 any event within the hereinabove described twenty-day
59 period relating to initial applications.

§62-1F-5. Recording of intercepted communications.

1 (a) If recorded, the contents of any conduct or oral
2 communications electronically intercepted shall be recorded
3 on tape or wire or other comparable device and done in such
4 a way or ways as will protect the recording from editing or
5 alterations thereto.

6 (b) Whenever practicable, the investigative or law-
7 enforcement officer overseeing the recording of an
8 electronic interception shall keep a signed, written record of:

9 (1) The date and hours of the surveillance;

10 (2) The time and duration of each electronic
11 interception;

12 (3) The participants, if known, in each electronic
13 interception; and

14 (4) A summary of the content of each intercepted
15 communication.

16 (c) Immediately upon the expiration of the period of
17 time during which interception and recording is authorized
18 by the order, or extensions thereof, such recordings shall be
19 made available, if requested, to the magistrate or judge
20 issuing such order. Custody of the recordings shall be with
21 the law-enforcement officer authorizing the application

22 underlying the order. Such recordings may not be destroyed
23 except upon an order of the magistrate or judge to whom
24 application was made or a circuit judge presiding over any
25 subsequent prosecution related to the electronic interception.
26 The records shall be maintained by the magistrate court
27 clerk or circuit clerk of the county where the application was
28 filed. Duplicate recordings may be made for use or
29 disclosure pursuant to the provisions of subsections (a) and
30 (b), section nine, article one-d of this chapter for
31 investigations by law-enforcement agencies.

§62-1F-6. Sealing of applications, orders and supporting papers.

1 Applications made and orders granted under this article
2 shall be ordered sealed by the magistrate or judge of the
3 circuit court to whom the application is made, and
4 maintained under seal in the custody of the magistrate court
5 clerk or the circuit clerk of the county in where the
6 application was filed. The applications and orders are
7 discoverable and may be disclosed only in accordance with
8 the applicable provisions of this code and the rules of
9 criminal procedure for the State of West Virginia, and may
10 not be destroyed except upon order of such magistrate or
11 judge, and in any event shall be kept for not less than ten
12 years.

§62-1F-7. Investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence.

1 (a) Any law-enforcement officer who has obtained
2 knowledge of the contents of any electronic interception, or
3 evidence derived therefrom, may disclose such contents or
4 evidence to another law-enforcement officer to the extent
5 that such disclosure is appropriate to the proper performance
6 of the official duties of the officer making or receiving the
7 disclosure.

8 (b) Any law-enforcement officer who, by any means
9 authorized by this article, has obtained knowledge of the
10 contents of any electronic interception or any evidence
11 derived therefrom may use such contents or evidence to the
12 extent such use is appropriate to the proper performance of
13 his or her official duties.

14 (c) Any person who by any means authorized by this
15 article, has obtained knowledge of the contents of any
16 electronic interception or evidence derived therefrom, may
17 disclose such contents or evidence to a law-enforcement
18 officer and may disclose such contents or evidence while
19 giving testimony under oath or affirmation in any criminal
20 proceeding in any court of this State or of another state or of
21 the United States or before any state or Federal grand jury or
22 investigating grand jury.

§62-1F-8. Interception of communications relating to other offenses.

1 When a law-enforcement officer, while engaged in court
2 authorized electronic interception in the manner authorized
3 herein, intercepts communications relating to offenses other
4 than those specified in the order of authorization, the
5 contents thereof, and evidence derived therefrom, may be
6 disclosed or used as provided in section seven. Such
7 contents and evidence may be disclosed in testimony under
8 oath or affirmation in any criminal proceeding in any court
9 of this State or of another state or of the United States or
10 before any state or Federal grand jury when authorized by a
11 judge who finds on subsequent application that the contents
12 were otherwise intercepted in accordance with the
13 provisions of this article. Such application shall be made as
14 soon as practicable.

§62-1F-9. Retroactive authorization.

1 Notwithstanding any other provision of this article,
2 when (1) a situation exists with respect to engaging in

3 electronic interception before an order authorizing such
4 interception can with due diligence be obtained; (2) the
5 factual basis for issuance of an order under this article
6 exists; and (3) it is determined that exigent circumstances
7 exist which prevent the submission of an application under
8 section three of this article, conduct or oral communications
9 in the person's home may be electronically intercepted on an
10 emergency basis if an application submitted in accordance
11 with section three of this article is made to a magistrate or
12 judge of the circuit within the county wherein the person's
13 home is located as soon as practicable, but not more than
14 three business days after the aforementioned determination.
15 If granted, the order shall recite the exigent circumstances
16 present and be retroactive to the time of such determination.
17 In the absence of an order approving such electronic
18 interception, the interception shall immediately terminate
19 when the communication sought is obtained or when the
20 application for the order is denied, whichever is earliest.

CHAPTER 12

(H.B. 202 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5a; and to amend and reenact §61-3-49 of said code, all relating to the receipt and transfer of any form of copper, aluminum, brass, lead or other nonferrous metal, stainless steel kegs or steel railroad track and track material; providing definitions; providing restrictions on applying for and grounds for

cancelling business registration certificates; imposing additional reporting and record retention requirements for certain purchasers of such metals; requiring the State Police to develop a standard form for reporting purchase information; providing for the inspection of records by law enforcement and investigators employed by public utilities and railroads; permitting investigators employed by public utilities and railroads to assist law enforcement investigations; providing for the return of such metals under certain conditions; and increasing criminal penalties for violations.

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 §11-12-5a; and that §61-3-49 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5a. Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.

1 (a) For the purposes of this section, the term “scrap
2 metal” shall have the same meaning ascribed to it in section
3 forty-nine, article three, chapter sixty-one of this code.

4 (b) No person that has had a previous business
5 registration certificate cancelled pursuant to subsection (j),
6 section forty-nine, article three, chapter sixty-one of this
7 code may apply for a subsequent business registration
8 certificate that would permit them to own, conduct, or
9 operate any business involving the purchase of scrap metal
10 or the operation or any salvage yard or recycling facility.

11 (c) No person may apply for a business registration
12 certificate that would permit them to own, conduct, or
13 operate any business involving the purchase of scrap metal
14 or the operation of any salvage yard or recycling facility in
15 which a person convicted in the previous two years of a
16 third or subsequent offense under section forty-nine, article
17 three, chapter sixty-one of this code will hold a financial
18 interest, be employed, or otherwise be involved in the day-
19 to-day operations of said business.

20 (d) Upon applying for a business registration certificate,
21 pursuant to section four of this article, that would permit the
22 applicant to own, conduct, or operate any business involving
23 the purchase of scrap metal or the operation of any salvage
24 yard or recycling facility, the Tax Commissioner shall
25 require as part of the application a statement by the applicant
26 that to the best of his or her knowledge and belief no person
27 that has been convicted in the previous two years of a third
28 or subsequent offense under section forty-nine, article three,
29 chapter sixty-one of this code will hold a financial interest,
30 be employed, or otherwise be involved in the day-to-day
31 operations of said business.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

1 (a) For the purposes of this section, the following terms
2 have the following meanings.

3 (1) “Business registration certificate” has the same
4 meaning ascribed to it in section two, article twelve, chapter
5 eleven of this code.

6 (2) “Purchaser” means any person in the business of
7 purchasing scrap metal, any salvage yard owner or operator,
8 or any public or commercial recycling facility owner or
9 operator, or any agent or employee thereof, who purchases
10 any form of scrap metal.

11 (3) “Scrap metal” means any form of copper, aluminum,
12 brass, lead or other nonferrous metal of any kind, stainless
13 steel kegs or steel railroad track and track material.

14 (b) Any purchaser of scrap metal shall make a record of
15 such purchase that shall contain the following information
16 for each transaction:

17 (1) The full name, permanent home and business
18 addresses, and telephone number, if available, of the seller;

19 (2) A description and the motor vehicle license number
20 of any vehicle used to transport the purchased scrap metal to
21 the place of purchase;

22 (3) The time and date of the transaction;

23 (4) A complete description of the kind, character and
24 weight of the scrap metal purchased; and

25 (5) A statement of whether the scrap metal was
26 purchased, taken as collateral for a loan, or taken on
27 consignment.

28 (c) A purchaser also shall require and retain from the
29 seller of the scrap metal the following:

30 (1) A signed certificate of ownership of the scrap metal
31 being sold or a signed authorization from the owner of the
32 scrap metal to sell said scrap metal; and

33 (2) A photocopy of a valid driver's license or
34 identification card issued by the West Virginia Division of
35 Motor Vehicles of the person delivering the scrap metal, or
36 in lieu thereof, any other valid photo identification of the
37 seller issued by any other state or the federal government:
38 *Provided*, That, if the purchaser has a copy of the seller's
39 valid photo identification on file, the purchaser may
40 reference the identification that is on file, without making a
41 separate photocopy for each transaction.

42 (d) It shall be unlawful for any purchaser to purchase
43 any scrap metal without obtaining and recording the
44 information required under subsections (b) and (c) of this
45 section. The provisions of this subsection do not apply to
46 purchases made at wholesale under contract or as a result of
47 a bidding process: *Provided*, That the purchaser retains and
48 makes available for review consistent with subsection (f) of
49 this section the contract, bill of sale, or similar
50 documentation of the purchase made at wholesale under
51 contract or as a result of a bidding process: *Provided*,
52 *however*, That the purchaser may redact any pricing or other
53 commercially sensitive information from said contract, bill
54 of sale, or similar documentation before making it available
55 for inspection.

56 (e) Within thirty days of the effective date of the
57 amendment and reenactment of this section during the
58 second extraordinary session of the Legislature in two
59 thousand seven, the West Virginia State Police shall make
60 available a standard form purchasers of scrap metal may use
61 to record all the information required under subsections (b)
62 and (c) of this section.

63 (f) Using the form authorized under subsection (e)
64 above, or his or her own form, a purchaser of scrap metal
65 shall retain the records required by this section at his or her
66 place of business for not less than three years after the date

67 of the purchase. Upon completion of a purchase, the records
68 required to be retained at a purchaser's place of business
69 shall be available for inspection by any law-enforcement
70 officer or, upon written request and during the purchaser's
71 regular business hours, by any investigator employed by a
72 public utility or railroad to investigate the theft of public
73 utility or railroad property: *Provided*, That in lieu of the
74 purchaser keeping the records at their place of business, the
75 purchaser shall file the records with the local detachment of
76 the State Police and with the chief of police of the
77 municipality or the sheriff of the county wherein he or she
78 is transacting business within seventy-two hours of
79 completion of the purchase. The records shall be retained
80 by the State Police and the chief of police of the
81 municipality or the sheriff for a period of not less than three
82 years.

83 (g) To the extent otherwise permitted by law, any
84 investigator employed by a public utility or railroad to
85 investigate the theft of public utility or railroad property
86 may accompany a law-enforcement officer upon the
87 premises of a purchaser in the execution of valid warrant or
88 assist law enforcement in the review of records required to
89 be retained pursuant to this section.

90 (h) Upon the entry of a final determination and order by
91 a court of competent jurisdiction, scrap metal found to have
92 been misappropriated, stolen or taken under false pretenses
93 may be returned to the proper owner of such material.

94 (i) Nothing in this section applies to scrap purchases by
95 manufacturing facilities that melt, or otherwise alter the
96 form of scrap metal and transform it into a new product or
97 to the purchase or transportation of food and beverage
98 containers or other nonindustrial materials having a
99 marginal value per individual unit.

100 (j) Any person who knowingly or with fraudulent intent
101 violates any provision of this section, including the knowing
102 failure to make a report or the knowing falsification of any
103 required information, is guilty of a misdemeanor and, upon
104 conviction of a first offense thereof, shall be fined not less
105 than one thousand dollars nor more than three thousand
106 dollars; upon conviction of a second offense thereof, shall
107 be fined not less than two thousand dollars and not more
108 than four thousand dollars and, notwithstanding the
109 provisions of section five, article twelve, chapter eleven of
110 this code, the court in which the conviction occurred shall
111 issue an order directing the Tax Commissioner to suspend
112 for a period of six months any business registration
113 certificate held by that person; and upon conviction of a
114 third or subsequent offense thereof shall be fined not less
115 than three thousand dollars and not more than five thousand
116 dollars and, notwithstanding the provisions of section five,
117 article twelve, chapter eleven of this code, the court in which
118 the conviction occurred shall issue an order directing the
119 Tax Commissioner to cancel any business registration
120 certificate held by that person and state the date said
121 cancellation shall take effect.

CHAPTER 13

**(S.B. 2001 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]**

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-21-12h,
relating to an additional modification decreasing federal

adjusted gross income for West Virginia state personal income tax for certain toll expenses charged by the West Virginia Parkways, Economic Development and Tourism Authority; and requiring the reimbursement to the General Revenue Fund in the amount of personal income tax revenue not collected as a result of the additional modification.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-12h, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12h. Additional modification reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads and paid electronically through use of parkways authority commuter (PAC) cards.

1 (a) For taxable years beginning on and after the first day
2 of January, two thousand seven, in addition to amounts
3 authorized to be subtracted from federal adjusted gross
4 income pursuant to subsection (c), section twelve of this
5 article, any payment during the taxable year for amounts
6 expended by an individual for tolls paid electronically
7 through use of a West Virginia Parkways, Economic
8 Development and Tourism Authority PAC card (parkways
9 authority commuter card) account for noncommercial
10 commuter passes for travel on toll roads in West Virginia,
11 not including amounts paid as refundable transponder
12 deposits or amounts reimbursed by an employer or
13 otherwise, is an authorized modification reducing federal
14 adjusted gross income, but only to the extent the amount is
15 not allowable as a deduction when arriving at the taxpayer's
16 federal adjusted gross income for the taxable year in which

17 the payment is made. In the case of a single person, a head
18 of household or a married couple filing a joint return, or a
19 married person filing a separate return, this authorized
20 modification reducing federal adjusted gross income shall
21 apply only to the portion of the expended amount that equals
22 or exceeds twenty-five dollars and the total amount
23 deducted for a taxable year shall not exceed one thousand
24 two hundred dollars. Any amount of qualified tolls paid and
25 eligible for this decreasing modification and not used in the
26 taxable year when paid shall carry forward for up to three
27 taxable years subsequent to the taxable year when paid.
28 Qualified toll payments not used by the end of the carry
29 forward period shall be forfeited.

30 (b) The Tax Commissioner annually, on or before the
31 thirty-first day of December of each calendar year,
32 beginning in two thousand eight, shall certify to the West
33 Virginia Parkways, Economic Development and Tourism
34 Authority: (i) The total dollar amount of tolls deducted by
35 individuals under this section on personal income tax returns
36 filed for the preceding taxable year beginning with taxable
37 year two thousand seven; and (ii) the total dollar amount of
38 personal income tax revenue not collected through the date
39 of such certification solely as a result of such total toll
40 deductions for such taxable year.

41 (c) On or before the thirtieth day of June of the
42 following calendar year, beginning in two thousand nine, the
43 West Virginia Parkways, Economic Development and
44 Tourism Authority shall pay to the Tax Commissioner an
45 amount equal to such certified total dollar amount of
46 personal income tax revenue not collected for the taxable
47 year covered by such certification: *Provided*, That the
48 authority shall make such payment solely from nontoll
49 revenues (that is, from revenues derived by the authority
50 from sources other than tolls charged for transit on the West
51 Virginia Turnpike) and only at such times and in such
52 amounts and installment payments as are permitted by

53 covenants and agreements of the authority under such bond
54 indentures and other bond agreements as are then applicable
55 to such nontoll revenues: *Provided, however,* That to the
56 extent required to comply with such bond indentures and
57 other bond agreements, the authority may defer the payment
58 of all or a part of such amount beyond the thirtieth day of
59 June of the following calendar year.



CHAPTER 14

(S.B. 2006 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed August 21, 2007; in effect from passage.]
[Approved by the Governor on September 6, 2007.]

AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended, relating to the Tourism Promotion Fund; and adding advertising on the internet to the definition of “direct advertising”.

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 to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

1 There is hereby continued in the State Treasury the
2 special revenue fund known as the Tourism Promotion Fund
3 created under prior enactment of section nine, article one of
4 this chapter.

5 (a) The Legislature finds that a courtesy patrol program
6 providing assistance to motorists on the state's highways is
7 one of the most beneficial methods to introduce a tourist
8 visiting the state of the state's hospitality and good will. For
9 that reason, four million seven hundred thousand dollars of
10 the moneys deposited in the fund each year shall be
11 deposited in a special revenue account in the State Treasury
12 to be known as the Courtesy Patrol Fund. Expenditures
13 from the fund shall be used solely to fund the courtesy patrol
14 program providing assistance to motorists on the state's
15 highways. Amounts collected in the fund which are found,
16 from time to time, to exceed funds needed for the purposes
17 set forth in this subdivision may be transferred to other
18 accounts or funds and redesignated for other purposes by
19 appropriation of the Legislature.

20 (b) If there are funds remaining after the distribution
21 required in subdivision (a) of this section, a minimum of
22 five percent of the moneys deposited remaining in the fund
23 each year shall be used solely for direct advertising for West
24 Virginia travel and tourism: *Provided*, That no less than
25 twenty percent of these funds be expended, with the
26 approval of the Director of the Division of Natural
27 Resources, to effectively promote and market the state's
28 parks, state forests, state recreation areas and wildlife
29 recreational resources. Direct advertising means advertising
30 which is limited to television, radio, mailings, newspaper,
31 magazines, the internet and outdoor billboards or any
32 combination thereof.

33 (c) The balance of the moneys deposited in the fund
34 shall be used for direct advertising within the state's travel
35 regions as defined by the commission. The funds shall be
36 made available to these districts beginning the first day of
37 July, one thousand nine hundred ninety-five, according to
38 legislative rules authorized for promulgation by the Tourism
39 Commission.

40 (d) All advertising expenditures over twenty-five
41 thousand dollars from the Tourism Promotion Fund require
42 prior approval by recorded vote of the commission. No
43 member of the commission or of any committee created by
44 the commission to evaluate applications for advertising or
45 other grants may participate in the discussion of, or action
46 upon, an application for or an award of any grant in which
47 the member has a direct financial interest.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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3065 64	4099 151	4355 158
3201 210	4117 84	4357 156
3215 87	4120 1	4364 148
4016 219	4121 185	4368 77
4017 221	4124 74	4381 120
4018 181	4129 159	4383 195
4019 3	4137 126	4386 154
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4023 68	4144 161	4394 130
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4038 101	4157 121	4418 114
4041 213	4206 137	4420 222
4059 83	4209 134	4421 212
4069 69	4244 139	4423 19
4072 168	4255 141	4433 92
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4478 86	4570 41	4676 179
4484 56	4588 71	4677 197
4490 28	4607 45	4684 107
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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239	209	417	138	564	81
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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641 228	682 90	778 226
645 113	704 124	780 175
650 190	706 104	781 143
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The first column gives the chapter assigned and the second column gives the bill number.

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3	4019	29	654	55	185
4	4664	30	4348	56	4484
5	553	31	4021	57	590
6	4438	32	237	58	4344
7	657	33	257	59	4644
8	4075	34	258	60	142
9	305	35	262	61	467
10	150	36	4637	62	325
11	4712	37	340	63	4619
12	4713	38	622	64	3065
13	4714	39	4613	65	217
14	4715	40	263	66	4139
15	673	41	4570	67	4331
16	674	42	784	68	4023
17	292	43	4028	69	4069
18	2517	44	570	70	535
19	4423	45	4607	71	4588
20	4078	46	280	72	595
21	88	47	4527	73	9
22	4464	48	671	74	4124
23	145	49	238	75	2967
24	4500	50	580	76	4477
25	4327	51	4388	77	4368
26	504	52	291	78	593

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Senate Bills = 2,3 Digits

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80 459	103 751	126 4137
81 564	104 706	127 4079
82 4623	105 4080	128 311
83 4059	106 4524	129 4032
84	..... 4117	107	.... 4684	130	.... 4394
85	..... 4472	108	.... 4150	131	..... 253
86	..... 4478	109	.... 4402	132	.... 4147
87	..... 3215	110	..... 736	133	..... 712
88	..... 4449	111	..... 519	134	.... 4209
89	..... 4434	112	..... 619	135	..... 373
90	..... 682	113	..... 645	136	..... 398
91	..... 287	114	.... 4418	137	.... 4206
92	..... 4433	115	.... 4513	138	..... 417
93	..... 507	116	.... 2503	139	.... 4244
94	..... 495	117	.... 4022	140	..... 349
95	..... 493	118	..... 270	141	.... 4255
96	..... 496	119	..... 715	142	.... 4076
97 514	120 4381	143 781
98 494	121 4157	144 234
99 236	122 653	145 481
100 746	123 4557	146 634
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156 4357	181 4018	206 101
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160 317	185 4121	210 3201
161 4144	186 512	211 545
162 13	187 4082	212 4421
163 722	188 201	213 4041
164 3056	189 208	214 4628
165 4495	190 650	215 680
166 4474	191 4304	216 552
167 4494	192 4406	217 474
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170 4073	195 4383	220 541
171 4036	196 4512	221 4017
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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2008

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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Second Extraordinary Session, 2008

House Bills = 3 Digits

Senate Bills = 4 Digits

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5 2015	12 212	18 218
6 2016	13 219	19 210
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Second Extraordinary Session, 2007**HOUSE BILLS**

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203 1	210 3	212 5
204 11				

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Second Extraordinary Session, 2007

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