

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4046**

5
6 (By Delegates Morgan, Swartzmiller, Hartman, Givens, Manypenny
7 and Staggers)

8 [Passed March 10, 2012; in effect ninety days from passage.]

9
10 AN ACT to repeal §16-1-16 of the Code of West Virginia, 1931, as
11 amended; to amend and reenact §5A-1-11 of said code; to amend
12 and reenact §9-2-1a of said code; to amend and reenact
13 §18-10A-2 of said code; to amend and reenact §19-1-3a of said
14 code; to amend and reenact §22C-12-6 of said code; to amend
15 and reenact §24A-1A-2 of said code; and to amend and reenact
16 §47A-1-1 of said code, all relating to removing obsolete code
17 provisions.

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

19 That §16-1-16 of the Code of West Virginia, 1931, as amended,
20 be repealed; that §5A-1-11 of said code be amended and reenacted;
21 that §9-2-1a of said code be amended and reenacted; that §18-10A-2
22 of said code be amended and reenacted; that §19-1-3a of said code
23 be amended and reenacted; that §22C-12-6 of said code be amended
24 and reenacted; that §24A-1A-2 of said code be amended and
25 reenacted; and that §47A-1-1 of said code be amended and reenacted,

1 all to read as follows:

2 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

3 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

4 **§5A-1-11. State Americans with disabilities coordinator.**

5 (a) There is continued within the Department of Administration
6 the position of the State Americans with Disabilities Coordinator,
7 who shall be appointed by the Secretary of the Department of
8 Administration with input from the chairperson from each of the
9 following four councils:

- 10 (1) The Developmental Disabilities Council;
11 (2) The Statewide Independent Living Council;
12 (3) The Mental Health Planning Council; and
13 (4) The State Rehabilitation Council.

14 (b) The coordinator shall be a full-time employee, and shall
15 have an in-depth working knowledge of the challenges facing persons
16 with disabilities. The coordinator may be a current employee of the
17 Department of Administration or other state agency employee.

18 (c) The coordinator shall:

19 (1) Advise the Director of Personnel in the development of
20 comprehensive policies and programs for the development,
21 implementation and monitoring of a statewide program to assure
22 compliance with 42 U.S.C. §12101, *et seq.*, the federal Americans
23 with Disabilities Act;

24 (2) Assist in the formulation of rules and standards relating
25 to the review, investigation and resolution of complaints of

1 discrimination in employment, education, housing and public
2 accommodation;

3 (3) Consult and collaborate with state and federal agency
4 officials in the state plan development;

5 (4) Consult and collaborate with agency Americans with
6 disabilities officers on the appropriate training for managers and
7 supervisors on regulations and issues;

8 (5) Represent the state on local, state and national
9 committees and panels related to Americans with disabilities;

10 (6) Advise the Governor and agency heads on Americans with
11 disabilities issues;

12 (7) Consult with state equal employment opportunity officers
13 on the hiring of persons with disabilities; and

14 (8) Be available to inspect and advise the leasing section of
15 the Division of Purchasing on all physical properties owned or
16 leased by the State of West Virginia for compliance with 42 U.S.C.
17 §12101, *et seq.*, the federal Americans with Disabilities Act.

18 (d) (1) The Secretary of the Department of Administration may
19 assess, charge and collect fees from each state spending unit which
20 utilizes the services of the coordinator, for the direct costs and
21 expenses incurred by the coordinator in providing those services.
22 Costs and expenses include travel, materials, equipment and
23 supplies. Moneys shall be collected through the Division of
24 Finance.

25 (2) A state spending unit shall agree in writing to all costs

1 and expenses before the services by the Americans with Disabilities
2 coordinator are rendered.

3 (e) There is continued in the Department of Administration a
4 special fund to be named the "Americans with Disabilities
5 Coordinator Fund", which shall be an interest-bearing account and
6 may be invested in accordance with the provisions of article six,
7 chapter twelve of this code, with the interest income a proper
8 credit to the fund. Funds paid into the account may be derived
9 from the following sources:

10 (1) All moneys received from state spending units for the
11 costs and expenses incurred by the state Americans with
12 Disabilities Coordinator for providing services related to the
13 state's implementation and compliance with 42 U.S.C. §12101, *et*
14 *seq.*, the federal Americans with Disabilities Act;

15 (2) Any gifts, grants, bequests, transfers or donations which
16 may be received from any governmental entity or unit or any person,
17 firm, foundation or corporation; and

18 (3) All interest or return on investment accruing to the fund.

19 (f) Moneys in the fund are to be used for the costs and
20 expenses incurred pursuant to this section. Any balance including
21 accrued interest in this special fund at the end of any fiscal year
22 shall not revert to the General Revenue Fund, but shall remain in
23 the fund for use by the Secretary of the Department of
24 Administration for providing additional Americans with Disabilities
25 Coordinator services within the State of West Virginia in the

1 ensuing fiscal years.

2 (g) The Secretary of the Department of Administration shall
3 report annually on the fund to the Governor, President of the
4 Senate and Speaker of the House of Delegates. The report must be
5 on CD ROM or other electronic media and shall not be in print
6 format.

7 **CHAPTER 9. HUMAN SERVICES.**

8 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND**
9 **RESPONSIBILITIES GENERALLY.**

10 **§9-2-1a. Department of Health and Human Resources.**

11 The Department of Health and Human Resources shall be charged
12 with the administration of this chapter.

13 **CHAPTER 18. EDUCATION.**

14 **ARTICLE 10A. REHABILITATION SERVICES.**

15 **§18-10A-2. Division of rehabilitation services.**

16 (a) The Division of Rehabilitation Services is transferred to
17 the department of education and the arts created in article one,
18 chapter five-f of this code. The secretary shall appoint any such
19 board, commission or council over the division to the extent
20 required by federal law to qualify for federal funds for providing
21 rehabilitation services for disabled persons. The secretary and
22 such boards, commissions or councils as he or she is required by
23 federal law to appoint are authorized and directed to cooperate
24 with the federal government to the fullest extent in an effort to
25 provide rehabilitation services for disabled persons.

1 (b) References in this article or article ten-b of this
2 chapter to the State Board of Vocational Education, the State Board
3 of Rehabilitation or the state board as the governing board of
4 vocational or other rehabilitation services or facilities means the
5 Secretary of Education and the Arts. All references in the code to
6 the Division of Vocational Rehabilitation means the Division of
7 Rehabilitation Services and all references to the Director of the
8 Division of Vocational Rehabilitation means the Director of the
9 Division of Rehabilitation Services.

10 **CHAPTER 19. AGRICULTURE.**

11 **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

12 **§19-1-3a. Marketing and Development Division; duties.**

13 The duties of the Marketing and Development Division are to
14 establish marketing, promotional and development programs to
15 advance West Virginia agriculture in the domestic and international
16 markets; to provide grading, inspection and market news services to
17 the various elements of the West Virginia agricultural industry;
18 and to regulate and license individuals involved in the marketing
19 of agricultural products.

20 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES,**
21 **COMMISSIONS AND COMPACTS.**

22 **ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.**

23 **§22C-12-6. When article effective; findings; continuation.**

24 This article shall take effect and become operative and the
25 compact be executed for and on behalf of this state only from and

1 after the approval, ratification, adoption and entering into
2 thereof by the states of New York, Pennsylvania, Ohio and Virginia.

3 **CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.**

4 **ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.**

5 **§24A-1A-2. Creation of advisory committee; purpose; members;**
6 **terms.**

7 (a) There is continued the Commercial Motor Vehicle Weight and
8 Safety Enforcement Advisory Committee, the purpose of which is to
9 study the implementation of the commercial motor vehicle weight and
10 safety enforcement program set forth in this article.

11 (b) The committee consists of the following members:

12 (1) One member who is an employee of the Division of Highways,
13 to be appointed by the Commissioner of Highways;

14 (2) One member who is an employee of the Public Service
15 Commission, to be appointed by the Chairman of the Public Service
16 Commission;

17 (3) One member who is a State Police officer, to be appointed
18 by the Superintendent of the State Police;

19 (4) One member who is an employee of the Division of Motor
20 Vehicles, to be appointed by the Commissioner of Motor Vehicles;

21 (5) One member who is an employee of the Development Office,
22 to be appointed by the Governor;

23 (6) One member who is representative of the coal industry, to
24 be appointed by the Governor;

25 (7) One member of the Senate, to be appointed by the President

1 of the Senate;

2 (8) One member of the House of Delegates, to be appointed by
3 the Speaker of the House of Delegates;

4 (9) Two citizen members, to be appointed by the Governor;

5 (10) One member of the largest organization representing coal
6 miners, to be appointed by the Governor; and

7 (11) One member of the largest organization representing
8 natural resource transportation drivers, to be appointed by the
9 Governor.

10 (c) Members shall serve for terms of three years. No member
11 may be appointed to serve more than two consecutive terms.

12 (d) The committee shall annually nominate from its members a
13 chair, who shall hold office for one year.

14 (e) The committee shall hold at least four meetings each year
15 or more often as may, in the discretion of the chair, be necessary
16 to effectuate the purposes of this article.

17 (f) The public members of the committee may receive
18 compensation for attendance at official meetings, not to exceed the
19 amount paid to members of the Legislature for their interim duties
20 as recommended by the Citizens Legislative Compensation Commission
21 and authorized by law.

22 (g) Committee members may be reimbursed for actual and
23 necessary expenses incurred for each day or portion of a day
24 engaged in the discharge of committee duties in a manner consistent
25 with guidelines of the Travel Management Office of the Department

1 of Administration.

2 (h) On or before January 1 of each year the committee shall
3 submit to the Governor and to the Legislature a report of its
4 recommendations for improving the effectiveness of the commercial
5 vehicle weight and safety enforcement program.

6 **CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.**

7 **ARTICLE 1. LENDING AND CREDIT RATE BOARD.**

8 **§47A-1-1. Legislative findings; creation, membership, powers and**
9 **duties of board; termination of board.**

10 (a) The Legislature finds and declares that:

11 (1) Changes in the permissible charges on loans, credit sales
12 or transactions, forbearance or other similar transactions requires
13 specialized knowledge of the needs of the citizens of West Virginia
14 for credit for personal and commercial purposes and knowledge of
15 the availability of such credit at reasonable rates to the citizens
16 of this state while affording a competitive return to persons
17 extending such credit;

18 (2) Maximum charges on loans, credit sales or transactions,
19 forbearance or other similar transactions executed in this state
20 should be prescribed from time to time to reflect changed economic
21 conditions, current interest rates and finance charges throughout
22 the United States and the availability of credit within the state
23 in order to promote the making of such loans in this state; and

24 (3) The prescribing of such maximum interest rates and finance
25 charges can be accomplished most effectively and flexibly by a

1 board comprised of the heads of designated government agencies,
2 university schools of business and administration and members of
3 the public.

4 (b) In view of the foregoing findings, it is the purpose of
5 this section to establish the West Virginia Lending and Credit Rate
6 Board and authorize said board to prescribe semiannually the
7 maximum interest rates and finance charges on loans, credit sales
8 or transactions, forbearance or similar transactions made pursuant
9 to this section subject to the provisions, conditions and
10 limitations hereinafter set forth and to authorize lenders, sellers
11 and other creditors to charge up to the maximum interest rates or
12 finance charges so fixed. The rates prescribed by the board are
13 alternative rates and any creditor may utilize either the rate or
14 rates set by the board or any other rate or rates which the
15 creditor is permitted to charge under any other provision of this
16 code.

17 (c) The West Virginia Lending and Credit Rate Board shall be
18 comprised of:

19 (1) The director of the Governor's office of Economic and
20 Community Development;

21 (2) The West Virginia State Treasurer;

22 (3) The West Virginia Banking Commissioner;

23 (4) The deans of the schools of business and administration at
24 Marshall University and West Virginia University;

25 (5) The Director of the Division of Consumer Protection of the

1 Attorney General's Office; and

2 (6) Three members of the public appointed by the Governor with
3 the advice and consent of the Senate. The members of the public
4 shall be appointed for terms of six years each, and until their
5 successors are appointed and qualified; except that of the members
6 first appointed, one shall be appointed for a term of two years,
7 one for a term of four years and one for a term of six years. A
8 member who has served one full term of six years shall be
9 ineligible for appointment for the next succeeding term. Vacancies
10 shall be filled by appointment of the Governor with the advice and
11 consent of the Senate, or if any vacancy remains unfilled for three
12 months, by a majority vote of the board. The West Virginia Banking
13 Commissioner shall serve as chairperson of the board and the rate
14 or rates set by the board shall be determined by a majority vote of
15 those members of the board in attendance at the respective board
16 meeting.

17 (d) The West Virginia Lending and Credit Rate Board is
18 authorized and directed to meet after December 31, 1983, on the
19 first Tuesday of April and on the first Tuesday of October of each
20 year or more or less frequently as required by the circumstances
21 and to prescribe by order a maximum rate of interest and finance
22 charge for the next succeeding six months, effective on June 1 and
23 on December 1, for any loans, credit sales or transactions,
24 forbearance or similar transactions made pursuant to this section.
25 In fixing said maximum rates of interest and finance charge, the

1 board shall take into consideration prevailing economic conditions,
2 including the monthly index of long-term United States government
3 bond yields for the preceding calendar month, yields on
4 conventional commercial short-term loans and notes throughout West
5 Virginia and throughout the United States and on corporate
6 interest-bearing securities of high quality, the availability of
7 credit at reasonable rates to the citizens of this state which
8 afford a competitive return to persons extending credit and other
9 factors as the board may determine.

10 (e) Any petition proposing a change in the prescribed maximum
11 rates of interest and finance charges must be filed in the office
12 of the Banking Commissioner no later than February 15 in order to
13 be voted on at the board meeting on the first Tuesday of April and
14 no later than August 15 in order to be voted on at the board
15 meeting on the first Tuesday of October. Whenever any change in
16 the prescribed maximum rates of interest and finance charges is
17 proposed the board shall schedule a hearing, at least fifteen days
18 prior to the board meeting at which the proposed rates of interest
19 and finance charge will be voted on by the members of the board,
20 and shall give all interested parties the opportunity to testify
21 and to submit information at such public hearing that is relevant.
22 Notice of the scheduled public hearing shall be issued and
23 disseminated to the public at least twenty days prior to the
24 scheduled date of the hearing.

25 (f) The board shall prescribe by order issued not later than

1 April 20 and not later than October 20, in accordance with the
2 provisions of subsection (d) of this section, the maximum rates of
3 interest and finance charge for the next succeeding six months for
4 any loan, credit sale, forbearance or similar transaction made
5 pursuant to this section and shall cause the maximum rate of
6 interest and finance charge to be issued and disseminated to the
7 public, to be effective on June 1 and December 1 for the next
8 succeeding six months.

9 (g) Notwithstanding the other provisions of this chapter, the
10 West Virginia Lending and Credit Rate Board shall not be required
11 to meet if no petition has been filed with the board requesting a
12 hearing and interest rates and economic conditions have not changed
13 sufficiently to indicate that any change in the existing rate order
14 would be required, and there are not at least two board members who
15 concur that a meeting of the board is necessary. If the board does
16 not meet, the maximum rates of interest and finance charges
17 prescribed by the board in the existing rate order shall remain in
18 full force and effect until the next time the board meets and
19 prescribes different maximum rates of interest and finance charges.

20 (h) If circumstances and economic conditions require, the
21 chairperson or any three board members, at any time, may call an
22 emergency interim meeting of the West Virginia Lending and Credit
23 Rate Board, at which time the chairperson shall give ten days'
24 notice of the scheduled emergency meeting to the public. All
25 interested parties shall have the opportunity to be heard and to

1 submit information at the emergency meeting that is relevant. Any
2 and all emergency rate board orders shall be effective within
3 thirty days from the date of the emergency meeting.

4 (i) Each member of the board, except those whose regular
5 salary is paid by the State of West Virginia, shall receive \$75 per
6 diem while actually engaged in the performance of the duties of the
7 board. Each member shall be reimbursed for all reasonable and
8 necessary expenses actually incurred during the performance of
9 their duties, except that in the event the expenses are paid by a
10 third party the members shall not be reimbursed by the state. The
11 reimbursement shall be paid out of the special revenue account of
12 the Division of Banking upon a requisition upon the State Auditor,
13 properly certified by the Banking Commissioner.

14 (j) In setting the maximum interest rates and finance charges,
15 the board may set varying rates based on the type of credit
16 transaction, the term of transaction, the type of debtor, the type
17 of creditor and other factors relevant to determining the rates.
18 In addition, the board may set varying rates for ranges of
19 principal balances within a single category of credit transactions.