

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 4046

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



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4046

(BY DELEGATES MORGAN, SWARTZMILLER, HARTMAN,
GIVENS, MANYPENNY AND STAGGERS)

[Passed March 10, 2012; to take effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

That §16-1-16 of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-11 of said code be amended and reenacted; that §9-2-1a of said code be amended and reenacted; that §18-10A-2 of said code be amended and reenacted;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

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

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

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

7 (1) The Developmental Disabilities Council;

8 (2) The Statewide Independent Living Council;

9 (3) The Mental Health Planning Council; and

10 (4) The State Rehabilitation Council.

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

16 (c) The coordinator shall:

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

22 (2) Assist in the formulation of rules and standards
23 relating to the review, investigation and resolution of
24 complaints of discrimination in employment, education,
25 housing and public accommodation;

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

28 (4) Consult and collaborate with agency Americans with
29 disabilities officers on the appropriate training for managers
30 and supervisors on regulations and issues;

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

33 (6) Advise the Governor and agency heads on Americans
34 with disabilities issues;

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

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

42 (d) (1) The Secretary of the Department of
43 Administration may assess, charge and collect fees from each
44 state spending unit which utilizes the services of the
45 coordinator, for the direct costs and expenses incurred by the
46 coordinator in providing those services. Costs and expenses
47 include travel, materials, equipment and supplies. Moneys
48 shall be collected through the Division of Finance.

49 (2) A state spending unit shall agree in writing to all costs
50 and expenses before the services by the Americans with
51 Disabilities coordinator are rendered.

52 (e) There is continued in the Department of
53 Administration a special fund to be named the “Americans
54 with Disabilities Coordinator Fund”, which shall be an
55 interest-bearing account and may be invested in accordance
56 with the provisions of article six, chapter twelve of this code,
57 with the interest income a proper credit to the fund. Funds
58 paid into the account may be derived from the following
59 sources:

60 (1) All moneys received from state spending units for the
61 costs and expenses incurred by the state Americans with
62 Disabilities Coordinator for providing services related to the
63 state’s implementation and compliance with 42 U.S.C.
64 §12101, *et seq.*, the federal Americans with Disabilities Act;

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

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

70 (f) Moneys in the fund are to be used for the costs and
71 expenses incurred pursuant to this section. Any balance
72 including accrued interest in this special fund at the end of
73 any fiscal year shall not revert to the General Revenue Fund,
74 but shall remain in the fund for use by the Secretary of the
75 Department of Administration for providing additional
76 Americans with Disabilities Coordinator services within the
77 State of West Virginia in the ensuing fiscal years.

78 (g) The Secretary of the Department of Administration
79 shall report annually on the fund to the Governor, President
80 of the Senate and Speaker of the House of Delegates. The
81 report must be on CD ROM or other electronic media and
82 shall not be in print format.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; P O W E R S , D U T I E S A N D RESPONSIBILITIES GENERALLY.

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

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

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

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

1 (a) The Division of Rehabilitation Services is transferred
2 to the department of education and the arts created in article
3 one, chapter five-f of this code. The secretary shall appoint
4 any such board, commission or council over the division to
5 the extent required by federal law to qualify for federal funds
6 for providing rehabilitation services for disabled persons.
7 The secretary and such boards, commissions or councils as he
8 or she is required by federal law to appoint are authorized and
9 directed to cooperate with the federal government to the
10 fullest extent in an effort to provide rehabilitation services for
11 disabled persons.

12 (b) References in this article or article ten-b of this
13 chapter to the State Board of Vocational Education, the State
14 Board of Rehabilitation or the state board as the governing
15 board of vocational or other rehabilitation services or
16 facilities means the Secretary of Education and the Arts. All
17 references in the code to the Division of Vocational
18 Rehabilitation means the Division of Rehabilitation Services
19 and all references to the Director of the Division of
20 Vocational Rehabilitation means the Director of the Division
21 of Rehabilitation Services.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

1 The duties of the Marketing and Development Division
2 are to establish marketing, promotional and development
3 programs to advance West Virginia agriculture in the
4 domestic and international markets; to provide grading,
5 inspection and market news services to the various elements
6 of the West Virginia agricultural industry; and to regulate and
7 license individuals involved in the marketing of agricultural
8 products.

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

ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

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

1 This article shall take effect and become operative and
2 the compact be executed for and on behalf of this state only

3 from and after the approval, ratification, adoption and
4 entering into thereof by the states of New York,
5 Pennsylvania, Ohio and Virginia.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

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

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

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

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

10 (2) One member who is an employee of the Public
11 Service Commission, to be appointed by the Chairman of the
12 Public Service Commission;

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

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

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

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

22 (7) One member of the Senate, to be appointed by the
23 President of the Senate;

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

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

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

30 (11) One member of the largest organization representing
31 natural resource transportation drivers, to be appointed by the
32 Governor.

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

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

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

41 (f) The public members of the committee may receive
42 compensation for attendance at official meetings, not to
43 exceed the amount paid to members of the Legislature for
44 their interim duties as recommended by the Citizens
45 Legislative Compensation Commission and authorized by
46 law.

47 (g) Committee members may be reimbursed for actual
48 and necessary expenses incurred for each day or portion of a
49 day engaged in the discharge of committee duties in a manner
50 consistent with guidelines of the Travel Management Office
51 of the Department of Administration.

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

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

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

1 (a) The Legislature finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearance or other similar transactions
4 requires specialized knowledge of the needs of the citizens of
5 West Virginia for credit for personal and commercial
6 purposes and knowledge of the availability of such credit at
7 reasonable rates to the citizens of this state while affording a
8 competitive return to persons extending such credit;

9 (2) Maximum charges on loans, credit sales or
10 transactions, forbearance or other similar transactions
11 executed in this state should be prescribed from time to time
12 to reflect changed economic conditions, current interest rates
13 and finance charges throughout the United States and the
14 availability of credit within the state in order to promote the
15 making of such loans in this state; and

16 (3) The prescribing of such maximum interest rates and
17 finance charges can be accomplished most effectively and
18 flexibly by a board comprised of the heads of designated
19 government agencies, university schools of business and
20 administration and members of the public.

21 (b) In view of the foregoing findings, it is the purpose of
22 this section to establish the West Virginia Lending and Credit
23 Rate Board and authorize said board to prescribe
24 semiannually the maximum interest rates and finance charges
25 on loans, credit sales or transactions, forbearance or similar
26 transactions made pursuant to this section subject to the
27 provisions, conditions and limitations hereinafter set forth
28 and to authorize lenders, sellers and other creditors to charge
29 up to the maximum interest rates or finance charges so fixed.
30 The rates prescribed by the board are alternative rates and
31 any creditor may utilize either the rate or rates set by the
32 board or any other rate or rates which the creditor is
33 permitted to charge under any other provision of this code.

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

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

38 (2) The West Virginia State Treasurer;

39 (3) The West Virginia Banking Commissioner;

40 (4) The deans of the schools of business and
41 administration at Marshall University and West Virginia
42 University;

43 (5) The Director of the Division of Consumer Protection
44 of the Attorney General's Office; and

45 (6) Three members of the public appointed by the
46 Governor with the advice and consent of the Senate. The
47 members of the public shall be appointed for terms of six
48 years each, and until their successors are appointed and
49 qualified; except that of the members first appointed, one
50 shall be appointed for a term of two years, one for a term of
51 four years and one for a term of six years. A member who
52 has served one full term of six years shall be ineligible for
53 appointment for the next succeeding term. Vacancies shall be
54 filled by appointment of the Governor with the advice and
55 consent of the Senate, or if any vacancy remains unfilled for
56 three months, by a majority vote of the board. The West
57 Virginia Banking Commissioner shall serve as chairperson of
58 the board and the rate or rates set by the board shall be
59 determined by a majority vote of those members of the board
60 in attendance at the respective board meeting.

61 (d) The West Virginia Lending and Credit Rate Board is
62 authorized and directed to meet after December 31, 1983, on the
63 first Tuesday of April and on the first Tuesday of October of
64 each year or more or less frequently as required by the
65 circumstances and to prescribe by order a maximum rate of
66 interest and finance charge for the next succeeding six months,
67 effective on June 1 and on December 1, for any loans, credit
68 sales or transactions, forbearance or similar transactions made
69 pursuant to this section. In fixing said maximum rates of interest
70 and finance charge, the board shall take into consideration
71 prevailing economic conditions, including the monthly index of
72 long-term United States government bond yields for the
73 preceding calendar month, yields on conventional commercial
74 short-term loans and notes throughout West Virginia and
75 throughout the United States and on corporate interest-bearing
76 securities of high quality, the availability of credit at reasonable
77 rates to the citizens of this state which afford a competitive
78 return to persons extending credit and other factors as the board
79 may determine.

80 (e) Any petition proposing a change in the prescribed
81 maximum rates of interest and finance charges must be filed
82 in the office of the Banking Commissioner no later than
83 February 15 in order to be voted on at the board meeting on
84 the first Tuesday of April and no later than August 15 in
85 order to be voted on at the board meeting on the first Tuesday
86 of October. Whenever any change in the prescribed
87 maximum rates of interest and finance charges is proposed
88 the board shall schedule a hearing, at least fifteen days prior
89 to the board meeting at which the proposed rates of interest
90 and finance charge will be voted on by the members of the
91 board, and shall give all interested parties the opportunity to
92 testify and to submit information at such public hearing that
93 is relevant. Notice of the scheduled public hearing shall be
94 issued and disseminated to the public at least twenty days
95 prior to the scheduled date of the hearing.

96 (f) The board shall prescribe by order issued not later
97 than April 20 and not later than October 20, in accordance
98 with the provisions of subsection (d) of this section, the
99 maximum rates of interest and finance charge for the next
100 succeeding six months for any loan, credit sale, forbearance
101 or similar transaction made pursuant to this section and shall
102 cause the maximum rate of interest and finance charge to be
103 issued and disseminated to the public, to be effective on June
104 1 and December 1 for the next succeeding six months.

105 (g) Notwithstanding the other provisions of this chapter,
106 the West Virginia Lending and Credit Rate Board shall not be
107 required to meet if no petition has been filed with the board
108 requesting a hearing and interest rates and economic
109 conditions have not changed sufficiently to indicate that any
110 change in the existing rate order would be required, and there
111 are not at least two board members who concur that a
112 meeting of the board is necessary. If the board does not meet,
113 the maximum rates of interest and finance charges prescribed

114 by the board in the existing rate order shall remain in full
115 force and effect until the next time the board meets and
116 prescribes different maximum rates of interest and finance
117 charges.

118 (h) If circumstances and economic conditions require, the
119 chairperson or any three board members, at any time, may
120 call an emergency interim meeting of the West Virginia
121 Lending and Credit Rate Board, at which time the
122 chairperson shall give ten days' notice of the scheduled
123 emergency meeting to the public. All interested parties shall
124 have the opportunity to be heard and to submit information at
125 the emergency meeting that is relevant. Any and all
126 emergency rate board orders shall be effective within thirty
127 days from the date of the emergency meeting.

128 (i) Each member of the board, except those whose regular
129 salary is paid by the State of West Virginia, shall receive \$75
130 per diem while actually engaged in the performance of the
131 duties of the board. Each member shall be reimbursed for all
132 reasonable and necessary expenses actually incurred during
133 the performance of their duties, except that in the event the
134 expenses are paid by a third party the members shall not be
135 reimbursed by the state. The reimbursement shall be paid out
136 of the special revenue account of the Division of Banking
137 upon a requisition upon the State Auditor, properly certified
138 by the Banking Commissioner.

139 (j) In setting the maximum interest rates and finance
140 charges, the board may set varying rates based on the type of
141 credit transaction, the term of transaction, the type of debtor,
142 the type of creditor and other factors relevant to determining
143 the rates. In addition, the board may set varying rates for
144 ranges of principal balances within a single category of credit
145 transactions.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor