ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 2010
First Extraordinary Session, 2010
Second Extraordinary Session, 2010
Fourth Extraordinary Session, 2009

Volume II
Chapters 133 - 206
Chapters 1 - 15
Chapters 1 - 11
Chapters 1 - 10

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

* *

TABLE OF CONTENTS

ACTS

Regular Session, 2010

GENERAL LAWS

Chapter	Bill No.		Page
		MOTOR VEHICLES	
133.	(SB698)	Relating to Mini-Trucks' Registration and Certificate of Title Requirements	1389
134.	(*SB394)	Authorizing DMV Use Certain Program to Identify Uninsured Vehicles	1394
135.	(*HB4172)	Authorizing the Division of Motor Vehicles to Issue Special License Plates for Members of Certain Organizations upon Approval of the Commissioner	1410
136.	(*SB186)	Creating DOT Administrative Law Judge Office	1451
137.	(*SB183)	Creating Diesel-Powered Motor Vehicle Idling Act	1510
		MUNICIPALITIES	
138.	(*HB4034)	Authorizing Any Municipality to Enact by Ordinance a Vacant Property Registration Program	1518
139.	(*HB2663)	Expanding the Power of Municipal Parking Authority Officers	1521

140. (SB519) Extending Social Security Benefits to Municipal Police Officers and Firefighters Retirement System Members 1522

NATURAL RESOURCES

141. (*SB336) Authorizing Division of Wildlife Resources Recover Possession or Restitution Value of Certain Animals 1524

142. (SB510) Extending DNR License and Stamp Fees Sunset Provision 1528

NONPROFIT YOUTH ORGANIZATIONS

143. (*SB143) Relating to Salary Bonus for National Board for Professional Teaching Standards Certification 1529

PEIA

144. (*HB4299) Providing That Nonstate Retired Employees Who Have Worked for Their Last Nonstate Employer for less than Five Years Are Responsible for Their Entire Premium Cost 1537

PERSONNEL

145. (SB464) Clarifying Division of Personnel Functions 1540

POLICE DEPARTMENTS

146. (*SB89) Relating to Reinstating Former Police Chiefs or Deputy Chiefs to Previously Held Positions 1541

TABLE OF CONTENTS

PRESCRIPTION DRUGS

147. (*SB81) Creating WV Official Prescription Program Act 1545

PROFESSIONS AND OCCUPATIONS

148. (*4450) Relating to Land Surveyors 1551

149. (SB372) Updating Language in WV Medical Practice Act 1590

150. (*HB4425) Developing a Pilot Program for Unlicensed Personnel to Administer Medication in a Nursing Home 1595

151. (SB584) Relating to Center for Nursing's Data Collection Policy 1596

152. (*SB230) Relating to the Board of Optometry 1600

153. (HB4144) Relating to the Board of Veterinary Medicine 1625

154. (*SB618) Relating to Osteopathic Physician Assistants 1652

155. (HB4142) Relating to the Board of Sanitarians 1665

156. (SB390) Clarifying Court Assesses Private Investigative and Security Services Regulations Violation Penalties 1683

157. (HB4559) Relating to the Requirements to be Certified as a Registered Forester 1684

158. (*HB4140) Relating to the Board of Physical Therapy 1686

159. (HB4138) Relating to the Practice of Medical Imaging and Radiation Therapy 1713

160. (*HB4186) Relating to the Practice of Nursing Home Administration 1716

161. (*HB4133) Clarifying the Requirements to Practice Marriage and Family Therapy 1734

PUBLIC EMPLOYEES INSURANCE

162. (*SB446) Clarifying Deceased Public Employees' Survivors Participate in Comprehensive Group Health Insurance Plans Only 1737

163. (*SB449) Relating to Peia Preexisting Conditions Limitations 1744

164. (SB442) Clarifying Peia Finance Board May Offset Certain Annual Retiree Premium Increases 1745

PUBLIC SAFETY

165. (*HB4194) Codifying the Division of Criminal Justice Services Being Incorporated into the Department of Military Affairs and Public Safety 1750

166. (*SB38) Creating the WV Service members Civil Relief Act 1763

PUBLIC SERVICE COMMISSION

167. (*SB656) Relating to Special Rates for Energy-intensive Industrial Electric Power Consumers 1764

168. (*SB614) Relating to PSC Approval of High Voltage Transmission Line Construction 1769

TABLE OF CONTENTS

PURCHASING DIVISION

169. (HB4582) Creating Reciprocity for West Virginia Small, Women and Minority-Owned Businesses who Receive such Preferences in Other States 1773

RAIL AUTHORITY

170. (SB527) Requiring State Rail Authority Establish Transportation and Local Rail Service Plan 1789

RAFFLES

171. (*SB577) Clarifying Definition of "Raffle" 1796

ROADS AND HIGHWAYS

172. (*SB427) Renaming and Reorganizing Parkways, Economic Development and Tourism Authority 1802

173. (*SB354) Updating Terms and Reporting Procedures for Traffic Crashes 1827

SCHOOL BUSES

174. (*HB4223) Increasing the Safety of School Children that Use School Buses 1834

SEARCH AND SEIZURE

175. (*SB649) Establishing Motor Vehicle Search Criteria 1837

SOLID WASTE MANAGEMENT

176. (*SB398) Prohibiting Landfill Disposal of Certain Electronic Devices 1841

TABLE OF CONTENTS

STATE FIRE CODE

177. (SB635) Requiring State Fire Commission Approve Certain County and Municipal Fire Ordinances and Regulations 1847

STATE LEASING

178. (*SB596) Exempting Adjutant General and National Guard from Certain Leasing and Accounting Requirements . . . 1850

STATE POLICE

179. (*SB462) Limiting State Police Applicants' Age 1854

STATE REGISTER

180. (SB453) Providing State Register Subscribers Electronic Format Option 1856

STATE VEHICLES

181. (*SB219) Relating to Managing State Motor Vehicle Fleet 1859

STREET GANGS

182. (*HB4188) Anti-Criminal Street Gang Act 1863

TATTOOS

183. (*HB2503) Requiring Licensed Tattoo Artist to Inform Patrons, Prior to Performing the Tattoo Procedure, of the Potential Problems that a Tattoo may Cause in Relation to the Reading of Magnetic Resonance Imaging 1873

TABLE OF CONTENTS

TAXATION

184. (*SB397) Creating Single Dwelling Residential Housing Index and Multiplier 1878

185. (*SB401) Relating to Ad Valorem Property Taxes 1880

186. (*HB4035) Relating to Electronic Filing of Tax Returns and Electronic Funds Transfers in Payment of Taxes 1927

187. (HB4312) Relating to the Tax Procedure and Administration Act 1939

188. (*HB4335) Relating to the Business Registration Tax 1944

189. (*SB185) Creating WV Commercial Patent Incentives Tax Act 1952

190. (*SB345) Requiring Telecommunications Tax Study 1969

191. (SB461) Relating to Administration of Sales and Use Tax 1974

192. (SB216) Updating Terms in the Personal Income Tax Act 2010

193. (SB214) Updating Certain Terms in the Corporation Net Income Tax Act 2012

194. (*SB232) Transferring Certain Requirements for Redeeming Delinquent Land Sales from County Clerks to State Auditor 2014

195. (*HB4486) Relating to Tax Tickets and Other Required Notifications Concerning Property Taxes 2042

TABLE OF CONTENTS

TECHNOLOGY

196. (SB583) Updating References to Information Services and Communications Division 2045

TOBACCO

197. (*HB2773) Increasing the Monetary Penalties for Selling Tobacco Products to Minors 2053

TRAFFIC REGULATIONS

198. (*SB435) Relating to Speed-Detecting Device Use Law 2056

TRANSPORTATION PROJECTS

199. (*SB352) Creating WV Community Empowerment Transportation Act 2058

UNIFORM STATE MILITARY CODE OF JUSTICE

200. (*HB4504) Adopting the Uniform State Military Code of Justice into West Virginia Law 2087

UTILITIES

201. (*SB465) Relating to Utility Service Disconnection 2182

WORKERS COMPENSATION

202. (*HB4459) Increasing the Time in which a Dependent may Apply for Workers Compensation Death Benefits Where Occupational Pneumoconiosis is Determined to be a Cause of Death 2204

TABLE OF CONTENTS

LOCAL - BOONE COUNTY

203. (SB548) Extending Time Boone County Board of Education Can Meet as a Levying Body 2209

LOCAL - FAIRMONT

204. (SB445) Extending Time the Fairmont City Council Can Meet 2210

LOCAL - MARSHALL COUNTY

205. (*HB4039) Increasing the Number of Persons that may be Appointed to the Marshall County Park and Recreation Board 2211

LOCAL - MOOREFIELD

206. (HB4309) Authorizing the Town of Moorefield, the Hardy County Commission, and Hardy County's Largest Corporate User of Public Wastewater Facilities to Construct and Maintain a State of the Art Regional Wastewater Treatment Plant 2213

TABLE OF CONTENTS

First Extraordinary Session, 2010

Chapter	Bill No.		Page
		APPROPRIATIONS	
1.	SB1014	Making Supplementary Appropriation of Federal Funds to office of Economic Opportunity Community Services and Workforce WV	2221
2.	SB1015	Making Supplementary Appropriation from General Revenue to Various Accounts	2223
3.	SB1016	Making Supplementary Appropriation of Unapproved Moneys to Board of Examiners for Registered Professional Nurses	2228
4.	SB1017	Supplementing, Amending and Increasing Items from State Road Fund to Division of Highways	2230
5.	SB1018	Making Supplementary Appropriation from State Excess Lottery Revenue Fund to Various Accounts	2231
6.	SB1019	Making Supplementary Appropriation from Unappropriated Moneys to Various Accounts	2235
7.	SB1020	Making Supplementary Appropriation of Federal Funds to Workforce WV	2239

8. SB1021 Making Supplementary Appropriation of Federal Funds to Various Accounts 2240

9. SB1022 Making Supplementary Appropriation of Unappropriated Moneys to Various Accounts 2244

10. SB1023 Supplementing and Amending Items from State Road Fund to Office of Administrative Hearings 2247

11. SB1024 Making Supplementary Appropriation from State Fund, General Revenue, to Various Accounts 2249

BEHAVIORAL MENTAL HEALTH SERVICES FUND

12. SB1010 Creating Behavioral Mental Health Services Fund 2266

CRIMES AND THEIR PUNISHMENT

13. SB1005 Relating to Criminal Offenses and Penalties Regarding Firearms and Ammunition Sales 2267

INTELLECTUAL DISABILITY

14. SB1004 Replacing References to "Mentally Retarded" with Intellectually Disabled" 2270

NATURAL RESOURCES

15. SB1003 Renaming Conservation Officers Natural Resources Police Officers 2335

TABLE OF CONTENTS

Second Extraordinary Session, 2010

Chapter	Bill No.		Page
		APPROPRIATIONS	
1.	HB202	Supplemental Appropriation, Secretary of State	2417
2.	HB214	Supplemental Appropriation to Various Departments	2419
3.	HB215	Supplemental Appropriation to Education and the Arts, Environmental Protection and Insurance Commissioner	2423
4.	HB216	Supplementing and Amending an Item of Existing Appropriation from the State Fund, General Revenue, to the Governor's Office Civil Contingent Fund	2425
		COURTS AND THEIR OFFICERS	
5.	HB212	Removing the Sunset Provision Regarding Family Court Appeals	2427
		EDUCATION	
6.	SB2010	Relating to Pilot Programs for Alternative Schools in Elementary and Middle Schools	2429
7.	SB2006	Relating to School Committees and School Teams	2434

8. SB2009 Relating to Pilot Programs to Increase Academic Achievement 2440

ELECTIONS

9. HB211 Allowing More Counties to Apply to Participate in the Military and Overseas Voting Pilot Program for the 2010 General Election 2441

PUBLIC MONEY

10. SB2003 Extending Sunset Provision Relating to Foundation Investments by MU and WVU 2444

UNITED STATES SENATORIAL SUCCESSION

11. HB201 United States Senatorial Succession 2447

TABLE OF CONTENTS

Fourth Extraordinary Session, 2009

Chapter	Bill No.		Page
		ALTERNATIVE AND RENEWABLE ENERGY	
1.	(HB408)	Relating to Definitions and the Tracking of Credits Awarded under the Alternative and Renewable Energy Portfolio Act	2455
		APPROPRIATIONS	
2.	(HB409)	Supplemental Appropriation to Various Spending Units	2469
3.	(HB410)	Supplemental Appropriation, Bureau of Senior Services	2474
4.	(HB411)	Supplementing, Amending, and Increasing an Item of Existing Appropriation from the State Road Fund to the Department of Transportation, Division of Highways	2476
		ELECTIONS	
5.	(HB406)	Uniformed Services and Overseas Voter Pilot Program	2478
		EXPUNGEMENT OF RECORDS	
6.	(SB4001)	Clarifying Certain Records Pertaining to Pardons Are Not Subject to Expungement Orders	2485

TABLE OF CONTENTS

MOTOR FUEL EXCISE TAX

7. (SB4004) Relating to Motor Fuel Excise Tax 2493

PENSIONS

8. (SB4007) Relating to Retirement Benefits of Professional Police Officers and Professional Firefighters 2501

RECOVERY ZONE BONDS

9. (SB4002) Relating to Federal Recovery Zone Bonds 2601

RETIREMENT SYSTEMS

10. (SB4003) Relating to Compliance of State Retirement Systems with Certain Provisions of the IRS Code 2606

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2010

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	Pat McGeehan (D)	Chester	79th
	Randy Swartzmiller (D)	Chester	75th - 79th
Second	Timothy R. Ennis (D)	Wellsburg	72nd - 79th
	Roy E. Givens (D)	Wellsburg	64th - 69th; 72nd - 75th; 79th
Third	Tal Hutchins (D)	Wheeling	72nd - 74th; 78th - 79th
	Orphy Klempa (D)	Wheeling	78th - 79th
Fourth	Michael T. Ferro (D)	McMechen	79th
	Scott G. Varner (D)	Moundsville	71st - 79th
Fifth	Dave Pethtel (D)	Hundred	69th - 71st; 74th - 79th
Sixth	William Roger Romine (R)	Sistersville	75th - 79th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78th - 79th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st - 79th
Ninth	Larry W. Border (R)	Davisville	70th - 79th
Tenth	Tom Azinger (R)	Vienna	72nd - 79th
	John Ellem (R)	Parkersburg	75th - 79th
	Daniel Poling (D)	Parkersburg	Appt. 1/07, 78th; 79th
Eleventh	Bob Ashley (R)	Spencer	67th - 73rd; 75th - 79th
Twelfth	Mitch Carmichael (R)	Ripley	75th - 79th
Thirteenth	Dale Martin (D)	Poca	75th - 79th
	Brady Paxton (D)	Liberty	71st; Appt. 4/22/99, 74th; 75th -79th
Fourteenth	Troy Andes (R)	Hurricane	78th - 79th
	Patti Eagloski Schoen (R)	Scott Depot	76th - 79th
Fifteenth	Kevin J. Craig (D)	Huntington	75th - 79th
	Carol Miller (R)	Huntington	78th - 79th
	Jim Morgan (D)	Huntington	Appt. 2/01, 75th; 76th - 79th
Sixteenth	Doug Reynolds (D)	Huntington	78th - 79th
	Kelli Sobonya (R)	Huntington	76th - 79th
	Dale Stephens (D)	Huntington	75th; 77th - 79th
Seventeenth	Don C. Perdue (D)	Prichard	74th - 79th
	Richard Thompson (D)	Lavelette	65th, Resigned 6/81; 76th - 79th
Eighteenth	Larry W. Barker (D)	Madison	77th - 79th
Nineteenth	Greg Butcher (D)	Chapmanville	73rd - 77th; 79th
	Jeff Eldridge (D)	Harts	77th - 79th
	Ralph Rodighiero (D)	Logan	78th - 79th
	Josh Stowers (D)	Alum Creek	79th
Twentieth	K. Steven Kominar (D)	Kermit	72nd - 79th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st - 79th
Twenty-second	Daniel J. Hall (D)	Oceana	79th
	Linda Goode Phillips (D)	Pineville	79th
Twenty-third	Clif Moore (D)	Thorpe	77th - 79th
Twenty-fourth	John H. Shott (R)	Bluefield	79th
Twenty-fifth	John R. Frazier (D)	Princeton	65th; 79th
	Thomas Mike Porter (R)	Princeton	77th - 79th
Twenty-sixth	Gerald Crosier (D)	Union	76th - 79th
Twenty-seventh	Virginia Mahan (D)	Green Sulphur Springs	73rd - 79th
	Ricky Moye (D)	Crab Orchard	78th - 79th
	Linda Sumner (R)	Beckley	76th - 79th
	Sally Susman (D)	Beckley	74th - 77th; 79th
	William R. Wooton (D)	Beckley	63rd - 67th; 69th; (Senate 70th - 75th); 79th

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd - 79th
	Ray Canterbury (R)	Ronceverte	75th - 79th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th - 68th; 70th - 77th; 79th
	David G. Perry (D)	Oak Hill	75th - 79th
	Margaret Anne Staggers (D)	Fayetteville	78th - 79th
Thirtieth	Bonnie Brown (D)	South Charleston	66th - 68th; 70th; 75th - 79th
	Nancy Peoples Guthrie (D)	Charleston	78th - 79th
	Barbara Burruss Hatfield (D)	South Charleston	67th - 69th; 74th - 79th
	Mark Hunt (D)	Charleston	72nd - 74th; 77th; 79th
	Doug Skaff (D)	South Charleston	79th
	Sharon Spencer (D)	Charleston	66th; 68th - 71st; 73rd - 79th
	Danny Wells	Charleston	77th - 79th
Thirty-first	[1]Meshea L. Poore (D)	Charleston	Appt. 12/18/09, 79th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th - 79th
	Patrick Lane (R)	Cross Lanes	77th - 79th
	Ron Walters (R)	Cross Lanes	71st - 73rd; 75th - 79th
Thirty-third	David Walker (D)	Procious	79th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd - 79th
Thirty-fifth	Sam J. Argento (D)	Mt. Nebo	77th - 79th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71st - 72nd; 76th - 79th
Thirty-seventh	William G. Hartman (D)	Elkins	76th - 79th
	[2]Mike Ross (D)	Coalton	(Senate 71st - 76th); 79th
Thirty-eighth	Margaret (Peggy) D. Smith (D)	Weston	79th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76th - 79th
Fortieth	Mary M. Poling (D)	Moatsville	75th - 79th
Forty-first	Samuel J. Cann (D)	Clarksburg	72nd - 79th
	Ron Fragale (D)	Clarksburg	70th - 73rd; 75th - 79th
	Richard J. Iaquinta (D)	Clarksburg	76th - 79th
	Tim Miley (D)	Bridgeport	77th - 79th
Forty-second	Mike Manypenny (D)	Grafton	79th
Forty-third	Michael Caputo (D)	Fairmont	73rd - 79th
	Linda Longstreth (D)	Fairmont	77th - 79th
	Tim Manchin (D)	Fairmont	76th - 79th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98, 73rd; 74th - 79th
	Barbara Evans Fleischauer (D)	Morgantown	72nd - 75th; 78th - 79th
	Charlene Marshall (D)	Morgantown	74th - 79th
	Alex J. Shook (D)	Morgantown	78th - 79th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93,71st; 72nd - 79th
Forty-sixth	Stan Shaver (D)	Tunnelton	74th - 75th; 78th - 79th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th - 79th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th - 79th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th - 70th; 74th - 79th
Fiftieth	Ruth Rowan (R)	Points	77th - 79th
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78th - 79th
Fifty-second	Craig P. Blair (R)	Martinsburg	76th - 79th
Fifty-third	Jonathan Miller (R)	Bunker Hill	78th- 79th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76th - 79th
Fifty-fifth	John Overington (R)	Martinsburg	67th - 79th
Fifty-sixth	[3]Terry Walker (D)	Kearneysville	Appt. 11/18/09, 79th
Fifty-seventh	John Doyle (D)	Shepherdstown	66th; 71st - 79th
Fifty-eighth	Tiffany Lawrence (D)	Ranson	79th

1 Appointed December 18, 2009, to fill the vacancy created by the resignation of the Honorable Carrie Webster.
2 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.
3 Appointed November 18, 2009 to fill the vacancy created by the resignation of the Honorable Robert C. Tabb.

(D)	Democrats	71
(R)	Republicans	29
	TOTAL	100

MEMBERS OF THE SENATE

REGULAR SESSION, 2010

OFFICERS

President– Earl Ray Tomblin, Chapmanville
Clerk–Darrell E. Holmes, Charleston
Sergeant at Arms–Howard Wellman, Bluefield
Doorkeeper- Billy L. Bevino, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd - 79th
	Jack Yost (D)	Wellsburg	(House 76th - 78th); 79th
Second	Larry J. Edgell (D)	New Martinsburg	74th - 79th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73rd; 74th - 79th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th - 79th
	J. Frank Deem (R)	Vienna	(House 52nd -56th); 57th - 62nd; 64th - 65th; (House 69th); 72nd - 79th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71st - 74th); 75th - 79th
	Mike Hall (R)	Hurricane	(House 72nd - 77th); 78th - 79th
Fifth	Evan H. Jenkins (D)	Huntington	(House 72nd - 74th); 76th - 79th
	Robert H. Plymale (D)	Ceredo	71st - 79th
Sixth	H. Truman Chafin (D)	Williamson	66th - 79th
	John Pat Fanning (D)	Iaeger	58th - 64th; 67th -68th; 73rd - 79th
Seventh	Ron Stollings (D)	Madison	78th - 79th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd -64th); 65th - 79th
Eighth	Corey J. Palumbo (D)	Charleston	(House 76th - 78th); 79th
	Erik P. Wells (D)	Charleston	78th - 79th
Ninth	D. Richard Browning (D)	Oceana	(House 69th - 72nd; 75th - 78th); 79th
	Mike Green (D)	Daniels	78th - 79th
Tenth	Donald T. Caruth (R)	Mercer	(House 76th) 77th - 79th
	Jesse O. Guills (R)	Lewisburg	76th - 79th
Eleventh	William R. Laird, IV (D)	Oak Hill	(House 74th); 79th
	C. Randy White (D)	Webster Springs	(House 73rd - 75th); 76th - 79th
Twelfth	Douglas Eugene Facemire (D)	Sutton	79th
	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/83, 66th; 67th -69th); 70th - 71st; 75th - 79th
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71st); 72nd - 79th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th - 72nd); 73rd -79th
Fourteenth	Dave Sypolt (R)	Kingwood	78th -79th
	Bob Williams (D)	Grafton	79th
Fifteenth	Clark Barnes (R)	Randolph	77th - 79th
	Walt Helmick (D)	Marlinton	(House 1 yr.,69th); Appt.9/89, 69th; 70th - 79th
Sixteenth	Herb Snyder (D)	Shenandoah Junction	73rd - 76th; 79th
	John R. Unger II (D)	Martinsburg	74th - 79th
Seventeenth	Dan Foster (D)	Charleston	(House 76th); 77th - 79th
	Brooks F. McCabe, Jr. (D)	Charleston	74th - 79th

(D)	Democrats	26
(R)	Republicans	8
	TOTAL	34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2010

STANDING

AGRICULTURE

Argento, *(Chair)*, Butcher *(Vice Chair)*, Beach, Boggs, Campbell, Caputo, Eldridge, Guthrie, Hall, Manypenny, Martin, Morgan, Moye, M. Poling, Rodighiero, Swartzmiller, Wells, Williams, Evans *(Minority Chair)*, Canterbury *(Minority Vice Chair)*, Anderson, Border, Ireland, C. Miller, and Overington.

BANKING AND INSURANCE

Moore *(Chair of Banking)*, Reynolds *(Vice Chair of Banking)*, Perry *(Chair of Insurance)*, Shook *(Vice Chair of Insurance)*, Cann, Frazier, Hartman, Hunt, Hutchins, Iaquinta, Louisos, Mahan, Manchin, Michael, Shaver, Skaff, T. Walker, Wooton, Azinger *(Minority Chair of Banking)*, Schoen *(Minority Vice Chair of Banking)*, Ashley *(Minority Chair of Insurance)*, Walters *(Minority Vice Chair of Insurance),* Andes, Carmichael and J. Miller.

CONSTITUTIONAL REVISION

Fleischauer *(Chair)*, Hutchins *(Vice Chair)*, Brown, Caputo, Doyle, Ferro, Frazier, Guthrie, Hatfield, Hunt, Kominar, Marshall, Moore, Morgan, Staggers, Varner, Wells, Webster, Overington *(Minority Chair)*, Romine *(Minority Vice Chair)*, Blair, Ellem, Lane, McGeehan and Sobonya.

EDUCATION

M. Poling *(Chair)*, Paxton *(Vice Chair)*, Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethtel, Rodighiero, Shaver, Smith, Stowers, D. Walker, Williams, Duke *(Minority*

Chair), Sumner *(Minority Vice Chair)*, Andes, Canterbury, Ireland, Romine, Rowan and Shott.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker *(Chair of Energy, Industry and Labor)*, Shaver *(Vice Chair of Energy, Industry and Labor)*, Kominar *(Chair of Economic Development and Small Business)*, Craig *(Vice Chair of Economic Development and Small Business)*, Brown, Butcher, Caputo, Fleischauer, Guthrie, Klempa, Mahan, Manypenny, Martin, Marshall, Paxton, Skaff, Walker, Sobonya *(Minority Chair of Energy, Industry and Labor),* C. Miller *(Minority Vice Chair of Energy, Industry and Labor)*, Blair *(Minority Chair of Economic Development and Small Business)*, Andes *(Minority Vice Chair of Economic Development and Small Business)*, Hamilton, McGeehan, Schoen and Shott.

FINANCE

White *(Chair)*, Campbell *(Vice Chair)*, Craig, Doyle, Eldridge, Guthrie, Iaquinta, Klempa, Kominar, Mahan, Manchin, Marshall, Perdue, Phillips, M. Poling, Reynolds, Spencer, Varner, Anderson *(Minority Chair)*, Carmichael *(Minority Vice Chair)*, Ashley, Blair, Border, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan *(Chair)*, Stephens *(Vice Chair)*, Argento, Boggs, Butcher, Cann, Givens, Hall, Hartman, Hatfield, Manypenny, Martin, D. Poling, Poore, Staggers, Swartzmiller, Talbott, T. Walker C. Miller *(Minority Chair)*, Porter *(Minority Vice Chair)*, Azinger, Cowles, Rowan, McGeehan and J. Miller.

HEALTH AND HUMAN RESOURCES

Perdue *(Chair)*, Hatfield *(Vice Chair)*, Campbell, Eldridge, Fleischauer, Lawrence, Manypenny, Marshall, Moore, Moye, Perry, Phillips, D. Poling, Rodighiero, Spencer, Staggers, Susman, Wooton, Border *(Minority Chair)*, J. Miller *(Minority Vice Chair)*, Andes, Carmichael, Lane, C. Miller and Rowan.

JUDICIARY

Miley *(Chair)*, Hunt *(Vice Chair)*, Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Hutchins, Longstreth, Michael, Moore, Ross, Shook, Skaff, Susman, Wells, Wooton, Ellem *(Minority Chair)*, Lane *(Minority Vice Chair)*, Hamilton, Overington, Schoen, Schadler and Sobonya.

NATURAL RESOURCES

Talbott *(Chair)*, Crosier *(Vice Chair)*, Argento, Beach, Caputo, Craig, Eldridge, Fragale, Guthrie, Hall, Manypenny, Martin, Moye, Phillips, Rodighiero, Shaver, Swartzmiller, Varner, Hamilton *(Minority Chair)*, Anderson *(Minority Vice Chair)* Duke, Ellem, Evans, Ireland and Romine.

PENSIONS AND RETIREMENT

Spencer *(Chair)*, Pethtel *(Vice Chair)*, Givens, Reynolds, Williams, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin *(Chair)*, Beach *(Vice Chair)*, Cann, Doyle, Fragale, Hartman, Lawrence, Longstreth, Louisos, D. Poling, Poore, Ross, Susman, Tabb, Varner, T. Walker, Williams, Sumner *(Minority Chair)*, Cowles *(Minority Vice Chair)* Anderson, Duke, Ellem, J. Miller, Schadler and Shott.

ROADS AND TRANSPORTATION

Martin *(Chair)*, Klempa *(Vice Chair)*, Argento, Barker, Butcher, Craig, Crosier, Ennis, Ferro, Hall, Kominar, Michael, Shook, Smith, Stephens, Stowers, Walker, Wells, Schadler *(Minority Chair)*, Canterbury *(Minority Vice Chair)*, Armstead, Cowles, Evans, Porter and Rowan.

COMMITTEE ON SENIOR CITIZEN ISSUES

Williams *(Chair)*, Ennis *(Vice Chair)*, Argento, Butcher, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Moye, Perdue, Pethtel, D. Poling, Ross, Spencer, Stephens, Susman, Rowan *(Minority Chair)*, Evans *(Minority Vice Chair)*, Azinger, Duke, Hamilton, Shott and Sumner.

RULES

Thompson *(Chair)*, Boggs, Caputo, Fragale, Hatfield, Marshall, Miley, Morgan, Paxton, M. Poling, Talbott, Varner, White, Anderson, Armstead, Border, Carmichael and Overington.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Iaquinta *(Chair of Veterans' Affairs)*, Longstreth, *(Vice Chair of Veterans' Affairs)*, Swartzmiller *(Chair of Homeland Security)*, Moye *(Vice Chair of Homeland Security)*, Cann, Ennis, Ferro, Fleischauer, Givens, Hatfield, Hutchins, Paxton, Pethtel, Spencer, Staggers, Smith, Stephens, Stowers, Azinger *(Minority Chair of Veterans' Affairs)*, Porter *(Minority Vice Chair Veterans' Affairs)*, Ireland *(Minority Chair Homeland Security)*, Ashley *(Minority Vice Chair of Homeland Security)*, Armstead, Sumner and Walters.

ENROLLED BILLS

Wells *(Chair)*, Staggers *(Vice Chair)*, Fragale and Overington.

HOUSE OF DELEGATES COMMITTEES

LEGISLATIVE RULE-MAKING REVIEW

Brown *(Chair)*, D. Poling *(Vice Chair)*, Talbott, Overington and Sobonya.

FOREST MANAGEMENT REVIEW

Michael *(Chair)*, Hartman *(Vice Chair)*.

PARKS AND RECREATION

Eldridge *(Co-Chair)*, Wells *(Co-Chair)*.

COMMITTEES OF THE SENATE
Regular Session, 2010

STANDING

AGRICULTURE

Senators White (*Chair*), Williams (*Vice Chair*), Helmick, Laird, Minard, Palumbo, Snyder, Unger, K. Facemyer, Guills and Sypolt.

BANKING AND INSURANCE

Senators Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Green, Helmick, Kessler, McCabe, Palumbo, Prezioso, Deem, K. Facemyer and Hall.

CONFIRMATIONS

Senators Stollings (*Chair*), Chafin (*Vice Chair*), Bowman, Green, Minard, Plymale, Prezioso, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Senators Browning (*Chair*), Unger (*Vice Chair*), D. Facemire, Helmick, Kessler, McCabe, Oliverio, Snyder, Stollings, Wells, Williams, Caruth, K. Facemyer and Hall.

EDUCATION

Senators Plymale (*Chair*), Wells (*Vice Chair*), Browning, Edgell, Foster, Green, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills.

ENERGY, INDUSTRY AND MINING

Senators Green (*Chair*), D. Facemire (*Vice Chair*), Fanning, Helmick, Jenkins, Kessler, Minard, Stollings, Williams, Yost, Deem, Guills and Sypolt.

FINANCE

Senators Helmick (*Chair*), McCabe (*Vice Chair*), Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt.

GOVERNMENT ORGANIZATION

Senators Bowman (*Chair*), Snyder (*Vice Chair*), Browning, Foster, Kessler, McCabe, Minard, Palumbo, White, Williams, Yost, Boley, Caruth and Sypolt.

HEALTH AND HUMAN RESOURCES

Senators Prezioso (*Chair*), Stollings (*Vice Chair*), Browning, Foster, Jenkins, Laird, Palumbo, Snyder, Unger, Yost, Boley, Guills and Hall.

INTERSTATE COOPERATION

Senators Jenkins (*Chair*), Snyder (*Vice Chair*), Browning, Palumbo, Wells, Caruth and Sypolt.

JUDICIARY

Senators Kessler (*Chair*), Oliverio (*Vice Chair*), Browning, Chafin, Foster, Jenkins, Laird, Minard, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall.

LABOR

Senators Oliverio (*Chair*), Williams (*Vice Chair*), Bowman, Foster, Green, Snyder, White, Yost, Barnes, Deem and Guills.

MILITARY

Senators Wells (*Chair*), Yost (*Vice Chair*), Edgell, D. Facemire, Laird, Oliverio, Williams, Boley and Sypolt.

NATURAL RESOURCES

Senators Fanning (*Chair*), Laird (*Vice Chair*), Bowman, Edgell, D. Facemire, Helmick, McCabe, Prezioso, Unger, White, Barnes, Deem and K. Facemyer.

PENSIONS

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

RULES

Senators Tomblin (*Chair*), Bowman, Chafin, Fanning, Helmick, Kessler, Plymale, Prezioso, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE

Senators Unger (*Chair*), Jenkins (*Vice Chair*), D. Facemire, Fanning, Plymale, Stollings, White, Barnes and K. Facemyer.

JOINT COMMITTEES

ENROLLED BILLS

Senators Palumbo (*Cochair*), D. Facemire, Laird, Wells and Barnes.

GOVERNMENT AND FINANCE

Senators Tomblin *(Cochair)*, Chafin, Helmick, Kessler, Plymale, Caruth and Deem.

GOVERNMENT OPERATIONS

Senators Bowman *(Cochair)*, Helmick, McCabe, Snyder and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Senators Minard *(Cochair)*, Snyder *(Vice Cochair)*, Prezioso, Unger, Boley, K. Facemyer and Tomblin *(ex officio)*.

PENSIONS AND RETIREMENT

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

RULES

Senators Tomblin *(Cochair)*, Chafin and Caruth.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Senators Browning *(Cochair)*, Helmick, Kessler, McCabe, Oliverio, Plymale, Prezioso, Stollings, Unger, Barnes, Caruth and K. Facemyer.

COMMISSION ON INTERSTATE COOPERATION

Senators Jenkins *(Cochair)*, Foster *(Vice Cochair)*, Minard, Stollings, Wells, Caruth, Sypolt and Tomblin *(ex officio)*.

COMMISSION ON SPECIAL INVESTIGATIONS

Senators Tomblin *(Cochair)*, Chafin, Helmick, Boley and Caruth.

FOREST MANAGEMENT REVIEW COMMISSION

Senators Helmick *(Cochair)*, Bowman, D. Facemire, Williams and K. Facemyer.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

Senators Plymale *(Cochair)*, Wells, Edgell, Green, Unger and Boley.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Senators Prezioso *(Cochair)*, Foster, Jenkins, Stollings, Unger, Boley, Caruth and Tomblin *(ex officio)*.

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Senators Unger *(Cochair)*, Green *(Vice Cochair)*, Fanning, Helmick and Hall.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Senators McCabe *(Cochair)*, Kessler, Stollings and Deem.

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Senators White *(Cochair)*, Green, Laird, Yost and Barnes.

CHAPTER 133

(S. B. 698 - By Senators Helmick, McCabe, Bowman, Edgell, D. Facemire, Green, Plymale, Prezioso, Wells, White, Boley, K. Facemyer, Guills and Sypolt)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §17A-3-2 of the Code of West Virginia, 1931, as amended, relating to motor vehicle registration requirements; adding an exemption from registration and certificate of title requirements for mini-trucks used for agricultural or horticultural purposes; increasing the distance for transporting fixtures attached to implements of husbandry; providing that an applicant for a farm use exemption certificate may not be required to appear before any assessor for renewal; and adding utility terrain vehicles to the list of recreational vehicles exempt from registration requirements.

Be it enacted by the Legislature of West Virginia:

That §17A-3-2 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-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders or nonresidents or under a temporary registration permit issued by the division as authorized under this chapter;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner of the implement and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the commissioner of the division of highways from one point of the owner's land to another part of the owner's land, irrespective of whether or not the tracts adjoin: *Provided,* That the distance between the points may not exceed thirty-five miles, or for the purpose of taking it or other fixtures attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in this subsection or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner of the trailer for the purpose of moving farm produce and livestock from the farm along a public highway for a distance not to exceed thirty-five miles to a storage house or packing plant, when the use is a seasonal operation:

(A) The exemptions contained in this section also apply to farm machinery, tractors and mini-trucks: *Provided,* That

the machinery, tractors and mini-trucks may use the highways in going from one tract of land to another tract of land regardless of whether the land is owned by the same or different persons. For the purposes of this section, mini-truck means a foreign-manufactured import or domestic-manufactured vehicle designed primarily for off-road use and powered by an engine ranging in size from 550cc to 660cc and weighing approximately one thousand eight hundred pounds;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise unless the vehicle is classified as a Class A motor vehicle with a farm-use exemption under the provisions of section one, article ten of this chapter and has a valid and current inspection sticker as required by the provisions of article sixteen, chapter seventeen-c of this code and is traveling from one tract of land to another over a distance of thirty-five miles or less;

(C) Any vehicle exempted under this section from the requirements of annual registration certificate and license plates may use the highways as provided in this section whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall have the words "farm use" affixed to both sides of the implement in ten-inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm-use exemption certificate on the lower driver's side of the windshield:

69 (i) The farm-use exemption certificate shall be provided
70 by the commissioner and shall be issued annually by the
71 assessor of the applicant's county of residence. The assessor
72 shall issue a farm-use exemption certificate to the applicant
73 upon his or her determination pursuant to an examination of
74 the property books or documentation provided by the
75 applicant that the vehicle has been properly assessed as Class
76 I personal property. Nothing in this section or any rule
77 promulgated under the authority of chapter twenty-nine-a of
78 this code may be construed to require any applicant for a
79 renewal of a farm use exemption certificate to appear
80 personally before any assessor. The assessor shall charge a
81 fee of two dollars for each certificate, which shall be retained
82 by the assessor;

83 (ii) A farm-use exemption certificate shall not exempt the
84 applicant from maintaining the security required by chapter
85 seventeen-d of this code on any vehicle being operated on the
86 roads or highways of this state;

87 (iii) No person charged with the offense of operating a
88 vehicle without a farm-use exemption certificate, if required
89 under this section, may be convicted of the offense if he or
90 she produces in court, or in the office of the arresting officer,
91 a valid farm-use exemption certificate for the vehicle in
92 question within five days;

93 (3) Any vehicle which is propelled exclusively by electric
94 power obtained from overhead trolley wires though not
95 operated upon rails;

96 (4) Any vehicle of a type subject to registration which is
97 owned by the government of the United States;

98 (5) Any wrecked or disabled vehicle towed by a licensed
99 wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles, utility terrain vehicles and snowmobiles; and

(7) Any special mobile equipment as defined in subsection (r), section one, article one of this chapter.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

(c) The division shall title and register low-speed vehicles if the manufacturer's certificate of origin clearly identifies the vehicle as a low-speed vehicle. The division may not title or register homemade low-speed vehicles or retrofitted golf carts and such vehicles do not qualify as low-speed vehicles in this state. In addition to all other motor vehicle laws and regulations, except as specifically exempted below, low-speed vehicles are subject to the following restrictions and requirements:

(1) Low-speed vehicles shall only be operated on private roads and on public roads and streets within the corporate limits of a municipality where the speed limit is not more than twenty-five miles per hour;

129 (2) Notwithstanding any provisions in this code to the
130 contrary, low-speed vehicles shall meet the requirements of
131 49 C.F.R. §571.500 (2003);

132 (3) In lieu of annual inspection, the owner of a low-speed
133 vehicle shall, upon initial application for registration and
134 each renewal thereafter, certify under penalty of false
135 swearing, that all lights, brakes, tires and seat belts are in
136 good working condition; and

137 (4) Any person operating a low-speed vehicle must hold
138 a valid driver's license, not an instruction permit.

CHAPTER 134

(Com. Sub. for S. B. 394 - By Senators Unger, McCabe, Chafin and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §17A-3-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17D-2A-1, §17D-2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend said code by adding thereto a new section, designated §17D-2A-6a; and to amend said code by adding thereto a new section, designated §33-6-31g, all relating to authorizing the Division of Motor Vehicles to use an electronic insurance verification program to identify uninsured noncommercial motor vehicles; surrendering registration plate to division when required security dropped by owner or registrant; requiring insurance companies licensed to do business in this state to participate in an electronic insurance

verification program developed by the motor vehicles commissioner; providing requirements for an electronic insurance verification program; providing duties of the motor vehicles commissioner relating to a program; setting forth duties of insurers relating to a program; providing penalties for failing to have the required security or knowingly operating a motor vehicle without the required security by suspending the owner's driver's license and revoking vehicle registration; providing for a hearing; providing that any rules promulgated by the motor vehicles commissioner pertaining to a program be consistent with the Insurance Industry Committee for Motor Vehicle Administration Model; and authorizing the insurance commissioner to promulgate rules and emergency rules, some of which may prescribe penalties.

Be it enacted by the Legislature of West Virginia:

That §17A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17D-2A-1, §17D-2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17D-2A-6a; and that said code be amended by adding thereto a new section, designated §33-6-31g, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

Every owner of a vehicle subject to registration under this article shall make application to the division for the registration of the vehicle upon the appropriate form or forms furnished by the division and every application shall bear the signature of the owner or his or her authorized agent, written with pen and ink, and the application shall contain:

(a) The name, bona fide residence and mailing address of the owner, the county in which he or she resides or business address of the owner if a firm, association or corporation.

(b) A description of the vehicle including, insofar as the data specified in this section may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(c) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if the motor vehicle is to be used alone, or if the motor vehicle is to be used in combination with other vehicles, the application for registration of the motor vehicle shall include a statement of the combined declared gross weight of the motor vehicle and the vehicles to be drawn by the motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place on the vehicle; and the application for registration of each vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles.

The declared gross weight stated in the application may not exceed the permissible gross weight for the axle spacing listed in the application as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application is subject to the single-axle load limit set forth in that chapter.

(d) Each applicant shall state whether the vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation and if used for compensation, or to be used, the applicants shall certify that the vehicle is used for compensation and shall, as a condition precedent to the registration of the vehicle, obtain a certificate of convenience or permit from the Public Service Commission unless otherwise exempt from this requirement in accordance with chapter twenty-four-a of this code.

(e) A statement under penalty of false swearing that liability insurance is in effect and will continue to be in effect through the entire term of the vehicle registration period within limits which may not be less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name and National Association of Insurance commissioners assigned code of the applicant's insurer, the policy number, and any other information required by the commissioner of Motor Vehicles or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six of said chapter and that as a self-insurer he or she has complied with the minimum security requirements as established in section two, article four of that chapter. If the commissioner determines that the required security is not or was not in effect, he or she shall suspend the vehicle owner's driver's license and revoke the vehicle registration in accordance with the provisions of article two-a, chapter seventeen-d of this code.

If any person making an application required under the provisions of this section, in the application knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant's insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in the application he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or be imprisoned in jail for a period not to exceed fifteen days, or both fined and imprisoned and, in addition to the fine or imprisonment, shall have his or her driver's license suspended for a period of ninety days and vehicle registration revoked if applicable.

(f) Any further information that is reasonably required by the division to enable it to determine whether the vehicle is lawfully entitled to registration.

(g) Each application for registration shall be accompanied by the fees provided in this article and an additional fee of fifty cents for each motor vehicle for which the applicant seeks registration.

(h) Revocation of a motor vehicle registration pursuant to this section does not affect the perfection or priority of a lien or security interest attaching to the motor vehicle that is noted on the certificate of title to the motor vehicle.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-1. Purpose of article.
§17D-2A-2. Scope of article.
§17D-2A-3. Required security; exceptions.
§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.

§17D-2A-6a. Determining if required security is in effect.
§17D-2A-7. Suspension or revocation of license, registration; reinstatement.
§17D-2A-8. Rules.

§17D-2A-1. Purpose of article.

The purpose of this article is to promote the public welfare by requiring every owner or registrant of a motor vehicle licensed in this state or operated in this state to maintain certain security during the registration period for the vehicle and to provide the means for the Division of Motor Vehicles, law enforcement and the judicial branch to electronically verify evidence of current insurance coverage at any time while a vehicle has a current registration or is operated on the roads and highways.

§17D-2A-2. Scope of article.

This article applies to the operation of all motor vehicles required to be registered or operated on the roads and highways to have the security in effect, as provided in section two, article two of this chapter, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.

For the purposes of this article, commercial auto coverage is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This article shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.

§17D-2A-3. Required security; exceptions.

(a) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as hereinafter provided in effect continuously

throughout the registration or licensing period except in case of a periodic use or seasonal vehicle, in which case the owner or registrant is required to maintain security upon the vehicle only for the portion of the year the vehicle is in actual use. As used in this section, a periodic use or seasonal vehicle means a recreational vehicle, antique motor vehicle, motorcycle or other motor vehicle which is stored part of the year and used seasonally.

(b) The owner or registrant shall immediately surrender the registration plate to the Division of Motor Vehicles when he or she drops the required security during the registration period. An owner of a periodic use or seasonal vehicle may retain a registration plate subject to legislative rules promulgated by the commissioner.

(c) Every nonresident owner or registrant of a motor vehicle, which is operated upon any road or highway of this state and which has been physically present within this state for more than thirty days during the preceding three hundred sixty-five days shall thereafter maintain security as hereinafter provided in effect continuously throughout the period the motor vehicle remains within this state.

(d) No person may knowingly drive or operate upon any road or highway any motor vehicle upon which security is required by the provisions of this article unless the required security is in effect.

(e) The security shall be provided by one of the following methods:

(1) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this state within limits which may not be less than the requirements of section two, article four of this chapter; or

(2) By qualification as a self-insurer under the provisions of section two, article six of this chapter.

(f) This article does not apply to any motor vehicle owned by the state or by a political subdivision of this state, nor to any motor vehicle owned by the federal government.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.

(a) At the time of investigation of a motor vehicle offense or crash the State Police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved and, by an inquiry through the on-line insurance verification program established in accordance with section six-a of this article if available as to the existence upon the vehicle or vehicles of the evidence of insurance or other security required by the provisions of this code and upon a finding by the law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the Division of Motor Vehicles of the finding within five days. *Provided,* That the law-enforcement officer or agent may not stop vehicles solely to inquire as to the certificate of insurance.

(b) A defendant who is charged with a traffic offense that requires an appearance in court shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses as required by this article subject to verification by the court through the Division of Motor Vehicles or its agent or by an on-line insurance verification program if available.

(c) If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days.

§17D-2A-6a. Determining if required security is in effect.

(a) The commissioner may make a determination that the required security on a motor vehicle is not in effect based upon crash reports required under the provisions of article four, chapter seventeen-c of this code, reports or citations from law-enforcement agencies, citations or abstracts of conviction from courts or from information from an on-line electronic insurance verification program.

(b) The commissioner is authorized to develop and implement an electronic insurance verification program based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration to electronically verify evidence of insurance coverage with insurance companies.

(c) The commissioner may contract with a third party vendor to act as his or her agent to develop the program, conduct the electronic verification process with insurance companies and to operate the program.

(d) If developed and implemented by the commissioner, the on-line insurance verification program shall:

(1) Be able to verify, on an on-demand basis minus reasonable down time for system maintenance as agreed upon by the division or its agent and the insurance carrier, the liability insurance status as of the time of the inquiry or at other times not exceeding six months prior unless otherwise agreed upon by the division or its agent and the insurance carrier or via other similar electronic system that is consistent with insurance industry and Insurance Industry Committee on

28 Motor Vehicle Administration (IICMVA) recommendations
29 and the specifications and standards of the IICMVA model;

30 (2) Be able to make insurance verification inquiries to
31 insurers by using multiple data elements for greater matching
32 accuracy including: National Association of Insurance
33 Commissioner's (NAIC) code specific to each licensed
34 insurance company, vehicle identification numbers and
35 policy number or other data elements as otherwise agreed to
36 by the division or its agent and the insurer.

37 (3) Provide sufficient measures for the security and
38 integrity of data including a requirement that the information
39 obtained through the operation of the program be only used
40 for the sole use of the Division of Motor Vehicles or its
41 agent, law enforcement and the judiciary to effectuate the
42 provisions of this article; and

43 (4) Utilize open and agreed upon data and data
44 transmission standards and standard SML extensible markup
45 language schema.

46 (e) If the commissioner develops and implements an on-
47 line insurance verification program, each insurer shall:

48 (1) Cooperate with the Division of Motor Vehicles, or its
49 agent in establishing and operating the program;

50 (2) Maintain the data necessary to verify the existence of
51 mandatory liability insurance coverage provided to its
52 customers pursuant to the required time period established for
53 the on-line insurance verification program;

54 (3) Maintain the internet web service, pursuant to the
55 requirements established under the online insurance
56 verification program, through which online insurance
57 verification can take place that includes the ability to respond
58 to authorized inquiries on whether the vehicle is insured or

59 the policy in effect on the requested date through the
60 insurer's national insurance commissioners association code,
61 vehicle identification number, insurance policy number or
62 other data key or keys as otherwise agreed to by the division
63 or its agent and the insurer;

64 (4) Provide security consistent with accepted insurance
65 industry and United States motor vehicle agency standards
66 pertinent to the transmission of personal data;

67 (5) Be immune from civil and administrative liability for
68 good faith efforts to comply with the terms of the verification
69 program; and

70 (6) As a condition of writing motor vehicle liability
71 insurance in this state, insurance carriers shall cooperate with
72 the division or its agent and the insurance commission in
73 establishing and maintaining an insurance verification
74 system. Nothing prohibits an insurer from using the services
75 of a third party vendor for facilitating the insurance
76 verification program required by this section.

77 (f) If the commissioner develops and implements an on-
78 line insurance verification program, the Division of Motor
79 Vehicles or its agent as applicable shall:

80 (1) Consult and cooperate with insurers in establishing
81 and operating the on-line insurance verification system;

82 (2) Designate and maintain a contact person for insurers
83 during the establishment and implementation of the on-line
84 insurance verification system;

85 (3) Conduct a pilot project to test the insurance
86 verification system no less than eighteen months prior to final
87 implementation;

88 (4) Establish and maintain the systems necessary to make
89 verification requests to insurers using the data elements that
90 the Division of Motor Vehicles or its agent and the insurer
91 have agreed upon and are necessary to receive accurate
92 responses from insurers;

93 (5) For all information transmitted and received,
94 implement and maintain strict system and data security
95 measures consistent with applicable standards. Data secured
96 via the reporting system by either the division or its agent
97 may not be shared with any party other than those permitted
98 by state or federal privacy laws;

99 (6) Be responsible for keeping all interested state agencies
100 informed on the implementation status, functionality, and
101 planned or unplanned service interruptions; and

102 (7) Provide alternative methods of reporting for small
103 insurers writing less than 500 non-commercial motor vehicle
104 policies in the state as determined by the Division of Motor
105 Vehicles or its agent;

106 (g) Any information obtained by the division or its agent
107 under the provisions of an electronic insurance system is for
108 the sole use of the Division of Motor Vehicles or its agent,
109 law enforcement and the judiciary to effectuate the provisions
110 of this article and is exempt from disclosure under the
111 provisions of article one, chapter twenty-nine-b and may not
112 be considered a public record as defined in section two,
113 article one, chapter twenty-nine-b of this code.

114 (h) Not more than two years after the establishment of an
115 on-line insurance verification program, the Division of Motor
116 Vehicles, after consultation with insurers, shall report to the
117 Legislature as to the costs of the program incurred by the
118 division, insurers and the public and the effectiveness of the
119 program in reducing the number of uninsured motor vehicles.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is registered or being operated upon the roads or highways shall have his or her driver's license suspended by the commissioner of the division of motor vehicles and shall have his or her motor vehicle registration revoked as follows:

(1) For the first offense, the commissioner shall suspend the driver's license and vehicle registration until such time as he or she presents current proof of insurance on all currently registered vehicles: *Provided,* That if an owner complies with the provisions of this subdivision, and pays a penalty fee of $200 before the effective date, the driver's license suspension of thirty days shall not be imposed and the vehicle registration revocation shall be not imposed and no reinstatement fees are required.

(2) For the second offense within five years, the commissioner shall suspend the owner's driver's license for a period of thirty days and shall revoke the owner's vehicle registration until he or she presents to the Division of Motor Vehicles the proof of security required by this article.

(3) For the third or subsequent offense within five years, the commissioner shall suspend the owner's driver's license for a period of ninety days and revoke the vehicle registration until such time as he or she presents current proof of insurance.

(4) If the motor vehicle is titled and registered in more than one name, the commissioner shall suspend the driver's license of only one of the owners.

(b) Any person who knowingly operates a motor vehicle upon the roads or highways of this state which does not have the security required by the provisions of this article shall have his or her driver's license suspended by the commissioner subject to the following:

(1) For the first offense, the commissioner shall suspend the driver's license until such time as he or she presents current proof of insurance on all currently registered vehicles: *Provided,* That if a driver complies with the provisions of this section and pays a penalty fee of $200 before the effective date of the driver's license suspension, the thirty day driver's license suspension shall not be imposed and no reinstatement fees are required.

(2) For the second offense within five years, the commissioner shall suspend the driver's license for a period of thirty days.

(3) For the third or subsequent offense within five years, the commissioner shall suspend the person's driver's license for a period of ninety days.

(c) A person's driver's license shall be suspended in accordance with subsection(b) of this section if the person is operating a motor vehicle designated for off-highway use upon the roads and highways of this state without the required security in effect.

(d) The commissioner may withdraw a suspension of a driver's license or revocation of a motor vehicle registration and refund any penalty or reinstatement fees at any time provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) A person may not have his or her driver's license suspended or motor vehicle registration revoked under any provisions of this section unless he or she and any lienholder noted on the certificate of title shall is first given written notice of such suspension or revocation sent by certified mail, at least thirty days prior to the effective date of such suspension or revocation, and upon that person's written request, he or she shall be afforded an opportunity for a hearing thereupon as well as a stay of the commissioner's order of suspension or revocation and an opportunity for judicial review of such hearing. The request for a hearing shall be made within ten days from the date of receipt of the notice of driver's license suspension or motor vehicle registration revocation. The scope of the hearing is limited to questions of identity or whether or not there was insurance in effect at the time of the event causing the commissioner's action. Upon affirmation of the commissioner's order, the period of suspension, revocation or other penalty commences to run.

(f) A suspended driver's license is reinstated following the period of suspension upon compliance with the conditions set forth in this article and a revoked motor vehicle registration is reissued only upon lawful compliance with the provisions of this article.

(g) Revocation of a motor vehicle registration pursuant to this section does not affect the perfection or priority of a lien or security interest attaching to the motor vehicle that is noted on the certificate of title to the motor vehicle.

(h) Any owner or driver of a motor vehicle determined by an electronic insurance verification program to be uninsured shall be assessed the same criminal and administrative sanctions prescribed in this chapter subject to the following;

(1) Any person who is assessed a penalty prescribed by this section has the same procedural due process provided by

97 this chapter or by rules promulgated by the division to show
98 that there was not a violation and provide for the exoneration
99 of any penalties or records; and

100 (2) The commissioner may accept a binder, an
101 identification card or a declaration page from a policy as
102 evidence of insurance pending electronic verification to stay
103 a pending administrative sanction.

§17D-2A-8. Rules.

1 The Commissioner of the Division of Motor Vehicles is
2 hereby authorized to promulgate rules, in accordance with
3 chapter twenty-nine-a of this code, for the administration,
4 operation and enforcement of the provisions of this article.
5 Any rules or procedures which pertain to an electronic
6 insurance verification program shall be consistent with the
7 provisions and intent of the standards and specifications of
8 the Insurance Industry Committee for Motor Vehicle
9 Administration Model.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31g. Electronic insurance verification program; insurer's duty to cooperate.

1 (a) If the Division of Motor Vehicles establishes an
2 electronic insurance verification program in accordance with
3 the provisions of section six-a, article two-a, chapter
4 seventeen-d of this code, any insurance company that issues
5 or delivers in this state a policy or contract of bodily injury
6 liability insurance or of property damage liability insurance
7 covering liability arising from the ownership, maintenance or
8 use of any motor vehicle, or upon any motor vehicle for
9 which a certificate of title has been issued by the Division of

10 Motor Vehicles of this state, shall comply with the
11 requirements of the program.

12 (b) The insurance commissioner may propose rules for
13 legislative approval in accordance with the provisions of
14 article three, chapter twenty-nine-a of this code as necessary
15 to implement the provisions of this section, and may initially
16 promulgate emergency rules pursuant to the provisions of
17 section fifteen, article three, chapter twenty-nine-a of this
18 code. Such rules may prescribe penalties, including fines and
19 other administrative sanctions, that may be imposed by the
20 commissioner for a company's failure to comply with
21 requirements of the electronic insurance verification
22 program.

CHAPTER 135

(Com. Sub. for H. B. 4172 - By Delegates Martin, Klempa, Barker, Cann, Ferro, Guthrie, Kominar, Shook, Stephens, Swartzmiller and J. Miller)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2010.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Motor Vehicles to issue special license plates for members of certain organizations upon approval of the commissioner; establishing requirements for eligible organizations; assessing a special initial application fee and a special annual fee; discontinuance of a specialty plate; and establishing a minimum

number of applications for the special plates prior to the design and production of the plates.

Be it enacted by the Legislature of West Virginia:

That §17A-3-14 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-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: *Provided,* That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: *Provided,* That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered

plate assigned to the official or his or her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of $15 for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the Army National Guard or Air National Guard, as appropriate, or the commanding officer of any United States Armed Forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the National Guard of this state or a member of any reserve unit of the United States Armed Forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state's Army or Air National Guard, or retired members of any reserve unit of the United States Armed Forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of $10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.

(C) A surviving spouse may continue to use his or her deceased spouse's National Guard forces license plate until

the surviving spouse dies, remarries or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: *Provided,* That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of $15 shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This

special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse's disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Purple Heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of $15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations' logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the procedures

for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the state Fire Commission, the State Fire Marshal, the State Fire Marshal's assistants, the State Fire Administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees. The firefighter certification department, section or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special

initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words "Wild Wonderful" as a slogan.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps league members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged Marine Corps

League license plate until the surviving spouse dies, remarries or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West

Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of $15 for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of $15, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as

defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of $15, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of $25 shall be charged for each special racing theme registration plate in addition to all other

fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star or Air Medal special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star or Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided,* That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Navy Cross, Distinguished Service Cross,

Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided,* That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The

insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant's fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of $10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.

(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase or expression which evokes patriotic pride or recognition.

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant's choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(24) Special license plates bearing the American flag and the logo "9/11/01".

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo "9/11/01".

(B) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of $10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands and health as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state's elementary and secondary schools and in the state's institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of $15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Nemesis Shrine to

comply with the minimum one hundred prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Knights of Columbus to comply with the minimum one hundred prepaid applications is hereby extended to January 15, 2007.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in

610 the State Road Fund. The design of the plate shall indicate
611 total years of service in the Legislature.

612 (C) An annual fee of $15 shall be charged for each plate
613 in addition to all other fees required by this chapter.

614 (32) Democratic state or county executive committee
615 member special registration plates:

616 (A) The division shall design and issue special
617 registration plates for use by democratic state or county
618 executive committee members. The design of the plates shall
619 include an insignia of a donkey and shall differentiate by
620 wording on the plate between state and county executive
621 committee members.

622 (B) An annual fee of $25 shall be charged for each
623 democratic state or county executive committee member
624 registration plate in addition to all other fees required by this
625 chapter. All annual fees collected for each special plate
626 issued under this subdivision shall be deposited into the State
627 Road Fund.

628 (C) A special application fee of $10 shall be charged at
629 the time of initial application as well as upon application for
630 any duplicate or replacement registration plate, in addition to
631 all other fees required by this chapter. All application fees
632 shall be deposited into the State Road Fund.

633 (D) The division shall not begin production of a plate
634 authorized under the provisions of this subdivision until the
635 division receives at least one hundred completed applications
636 from the state or county executive committee members,
637 including all fees required pursuant to this subdivision.

638 (E) Notwithstanding the provisions of subsection (d) of
639 this section, the time period for the democratic executive

committee to comply with the minimum one hundred prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of $10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of $15, which is in addition to any other registration or license fee required by this chapter. The division shall

672 charge an annual fee of $15 for each special registration plate
673 in addition to all other fees required by this chapter. All
674 special fees shall be collected by the division and deposited
675 into the State Road Fund.

676 (35) The division may issue special registration plates to
677 members of the Harley Owners Group as follows:

678 (A) Upon appropriate application, the division may issue
679 a special registration plate designed by the commissioner for
680 any number of vehicles titled in the name of the qualified
681 applicant. Persons desiring the special registration plate shall
682 offer sufficient proof of membership in the Harley Owners
683 Group.

684 (B) The division shall charge a special initial application
685 fee of $10 in addition to all other fees required by law. This
686 special fee shall be collected by the division and deposited in
687 the State Road Fund.

688 (C) An annual fee of $15 shall be charged for each plate
689 in addition to all other fees required by this chapter.

690 (36) The division may issue special registration plates for
691 persons retired from any branch of the armed services of the
692 United States as follows:

693 (A) Upon appropriate application, there shall be issued to
694 any person who has retired after service in any branch of the
695 armed services of the United States, a special registration
696 plate for any number of vehicles titled in the name of the
697 qualified applicant with an insignia designed by the
698 Commissioner of the Division of Motor Vehicles to designate
699 the recipient as retired from the armed services of the United
700 States.

701 (B) A special initial application fee of $10 shall be
702 charged in addition to all other fees required by law. This

special fee shall be collected by the division and deposited in the State Road Fund: *Provided,* That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's retired military license plate until the surviving spouse dies, remarries or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for Fairmont State College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia may apply for a special license plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner.

(B) The division shall charge a special initial application fee of $10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children's education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of $10 for each special license plate in

addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided,* That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(41) The division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency.

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff's department, the State Police or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs' Association, the West Virginia Troopers Association or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) Registration plates issued pursuant to this subdivision are exempt from the registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's special registration plate until the surviving spouse dies, remarries or does not renew the plate.

(D) Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may

obtain a license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(42) The division may issue a special registration plate for persons who are Native Americans and residents of this state.

(A) Upon appropriate application, the division shall issue to an applicant who is a Native American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native American.

(B) The division shall charge a special one-time initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of $10. This special fee shall be collected by the division and deposited in the State Road Fund.

825 (C) An annual fee of $15 shall be charged for each plate
826 in addition to all other fees required by this chapter.

827 (44) The division may issue special registration plates
828 recognizing and honoring breast cancer survivors.

829 (A) Upon appropriate application, the division may issue
830 a special registration plate designed by the commissioner to
831 recognize and honor breast cancer survivors, such plate to
832 incorporate somewhere in the design the "pink ribbon
833 emblem", for any number of vehicles titled in the name of the
834 applicant.

835 (B) The division shall charge a special initial application
836 fee of $10. This special fee shall be deposited in the State
837 Road Fund.

838 (C) An annual fee of $15 shall be charged for each plate
839 in addition to all other fees required by this chapter.

840 (45) The division may issue special registration plates to
841 members of the Knights of Pythias or Pythian Sisters as
842 follows:

843 (A) Upon appropriate application, the division may issue
844 a special registration plate designed by the commissioner for
845 any number of vehicles titled in the name of the qualified
846 applicant. Persons desiring the special registration plate shall
847 offer sufficient proof of membership in the Knights of
848 Pythias or Pythian Sisters.

849 (B) The division shall charge a special initial application
850 fee of $10 in addition to all other fees required by law. This
851 special fee shall be collected by the division and deposited in
852 the State Road Fund.

853 (C) An annual fee of $15 shall be charged for each plate
854 in addition to all other fees required by this chapter.

855 (46) The commissioner may issue special registration
856 plates for whitewater rafting enthusiasts as follows:

857 (A) Upon appropriate application, the division may issue
858 a special registration plate designed by the commissioner for
859 any number of vehicles titled in the name of the qualified
860 applicant.

861 (B) The division shall charge a special initial application
862 fee of $10 in addition to all other fees required by law. This
863 special fee shall be collected by the division and deposited in
864 the State Road Fund.

865 (C) The division shall charge an annual fee of $15 for
866 each special registration plate in addition to all other fees
867 required by this chapter.

868 (47) The division may issue special registration plates to
869 members of Lions International as follows:

870 (A) Upon appropriate application, the division may issue
871 a special registration plate designed by the commissioner in
872 consultation with Lions International for any number of
873 vehicles titled in the name of the qualified applicant. Persons
874 desiring the special registration plate shall offer sufficient
875 proof of membership in Lions International.

876 (B) The division shall charge a special initial application
877 fee of $10 in addition to all other fees required by law. This
878 special fee shall be collected by the division and deposited in
879 the State Road Fund.

880 (C) An annual fee of $15 shall be charged for each plate
881 in addition to all other fees required by this chapter.

882 (48) The division may issue special registration plates
883 supporting organ donation as follows:

884 (A) Upon appropriate application, the division may issue
885 a special registration plate designed by the commissioner
886 which recognizes, supports and honors organ and tissue
887 donors and includes the words "Donate Life".

888 (B) The division shall charge a special initial application
889 fee of $10 in addition to all other fees required by law. This
890 special fee shall be collected by the division and deposited in
891 the State Road Fund.

892 (C) An annual fee of $15 shall be charged for each plate
893 in addition to all other fees required by this chapter.

894 (49) The division may issue special registration plates to
895 members of the West Virginia Bar Association as follows:

896 (A) Upon appropriate application, the division may issue
897 a special registration plate designed by the commissioner in
898 consultation with the West Virginia Bar Association for any
899 number of vehicles titled in the name of the qualified
900 applicant. Persons desiring the special registration plate shall
901 offer sufficient proof of membership in the West Virginia Bar
902 Association.

903 (B) The division shall charge a special initial application
904 fee of $10 in addition to all other fees required by law. This
905 special fee shall be collected by the division and deposited in
906 the State Road Fund.

907 (C) An annual fee of $15 shall be charged for each plate
908 in addition to all other fees required by this chapter.

909 (50) The division may issue special registration plates
910 bearing an appropriate logo, symbol or insignia combined
911 with the words "SHARE THE ROAD" designed to promote
912 bicycling in the state as follows:

913 (A) Upon appropriate application, the division may issue
914 a special registration plate designed by the commissioner for
915 any number of vehicles titled in the name of the applicant.

916 (B) The division shall charge a special initial application
917 fee of $10 in addition to all other fees required by law. This
918 special fee shall be collected by the division and deposited in
919 the State Road Fund.

920 (C) An annual fee of $15 shall be charged for each plate
921 in addition to all other fees required by this chapter.

922 (51) The division may issue special registration plates
923 honoring coal miners as follows:

924 (A) Upon appropriate application, the division shall issue
925 a special registration plate depicting and displaying coal
926 miners in mining activities as prescribed and designated by
927 the commissioner and the board of the National Coal
928 Heritage Area Authority.

929 (B) The division shall charge a special initial application
930 fee of $10 in addition to all other fees required by law. This
931 special fee shall be collected by the division and deposited in
932 the State Road Fund.

933 (C) An annual fee of $15 shall be charged for each plate
934 in addition to all other fees required by this chapter.

935 (52) The division may issue special registration plates to
936 present and former Boy Scouts as follows:

937 (A) Upon appropriate application, the division may issue
938 a special registration plate designed by the Commissioner for
939 any number of vehicles titled in the name of the qualified
940 applicant. Persons desiring the special registration plate shall
941 offer sufficient proof of present or past membership in the
942 Boy Scouts as either a member or a leader.

943 (B) The division shall charge a special initial application
944 fee of $10 in addition to all other fees required by law. This
945 special fee shall be collected by the division and deposited in
946 the State Road Fund.

947 (C) An annual fee of $15 shall be charged for each plate
948 in addition to all other fees required by this chapter.

949 (53) The division may issue special registration plates to
950 present and former Boy Scouts who have achieved Eagle
951 Scout status as follows:

952 (A) Upon appropriate application, the division may issue
953 a special registration plate designed by the commissioner for
954 any number of vehicles titled in the name of the qualified
955 applicant. Persons desiring the special registration plate shall
956 offer sufficient proof of achievement of Eagle Scout status.

957 (B) The division shall charge a special initial application
958 fee of $10 in addition to all other fees required by law. This
959 special fee shall be deposited in the State Road Fund.

960 (C) An annual fee of $15 shall be charged for each plate
961 in addition to all other fees required by this chapter.

962 (54) The division may issue special registration plates
963 recognizing and memorializing victims of domestic violence.

964 (A) Upon appropriate application, the division may issue
965 a special registration plate designed by the commissioner to
966 recognize and memorialize victims of domestic violence,
967 such plate to incorporate somewhere in the design the "purple
968 ribbon emblem", for any number of vehicles titled in the
969 name of the applicant.

970 (B) The division shall charge a special initial application
971 fee of $10. This special fee shall be deposited in the State
972 Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of $10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of $15 shall be charged for each plate in addition to all other fees required by this chapter.

1004 (57) The commissioner may issue special registration
1005 plates for horse enthusiasts as follows:

1006 (A) Upon appropriate application, the division may issue
1007 a special registration plate designed by the commissioner for
1008 any number of vehicles titled in the name of the qualified
1009 applicant.

1010 (B) The division shall charge a special initial application
1011 fee of $10 in addition to all other fees required by law. This
1012 special fee shall be collected by the division and deposited in
1013 the State Road Fund.

1014 (C) The division shall charge an annual fee of $15 for
1015 each special registration plate in addition to all other fees
1016 required by this chapter.

1017 (58) The commissioner may issue special registration
1018 plates to the next of kin of a member of any branch of the
1019 armed services of the United States killed in combat as
1020 follows:

1021 (A) Upon appropriate application, the division shall issue
1022 a special registration plate for any number of vehicles titled
1023 in the name of a qualified applicant depicting the Gold Star
1024 awarded by the United States Department of Defense as
1025 prescribed and designated by the commissioner.

1026 (B) The next of kin shall provide sufficient proof of
1027 receiving a Gold Star lapel button from the United States
1028 Department of Defense in accordance with Public Law 534,
1029 89th Congress, and criteria established by the United States
1030 Department of Defense, including criteria to determine next
1031 of kin.

1032 (C) The division shall charge a special initial application
1033 fee of $10 in addition to all other fees required by law. This

1034 special fee shall be collected by the division and deposited in
1035 the State Road Fund.

1036 (D) The provisions of subsection (d) of this section are
1037 not applicable for the issuance of the special license plates
1038 designated by this subdivision.

1039 (59) The commissioner may issue special registration
1040 plates for retired or former Justices of the Supreme Court of
1041 Appeals of West Virginia as follows:

1042 (A) Upon appropriate application, the division may issue
1043 a special registration plate designed by the commissioner for
1044 any number of vehicles titled in the name of the qualified
1045 applicant.

1046 (B) The division shall charge a special initial application
1047 fee of $10 in addition to all other fees required by law. This
1048 special fee shall be collected by the division and deposited in
1049 the State Road Fund.

1050 (C) The division shall charge an annual fee of $15 for
1051 each special registration plate in addition to all other fees
1052 required by this chapter.

1053 (D) The provisions of subsection (d) of this section are
1054 not applicable for the issuance of the special license plates
1055 designated by this subdivision.

1056 (60) Upon approval by the commissioner of an
1057 appropriate application, and upon all requirements of this
1058 subdivision being satisfied, the division may issue special
1059 registration plates for class A and class G motor vehicles to
1060 members of an organization for which a special registration
1061 plate has not been issued pursuant to any other subdivision in
1062 this subsection prior to January 1, 2010, in accordance with
1063 the provisions of this subdivision.

1064 (A) An organization desiring to create a special
1065 registration plate must comply with the following
1066 requirements to be eligible to apply for the creation and
1067 issuance of a special registration plate:

1068 (i) The organization must be a nonprofit organization
1069 organized and existing under Section 501(c)(3) of Title 26 of
1070 the Internal Revenue Code and based, headquartered or have
1071 a chapter in West Virginia;

1072 (ii) The organization may be organized for, but may not
1073 be restricted to, social, civic, higher education or
1074 entertainment purposes;

1075 (iii) The organization may not be a political party and
1076 may not have been created or exist primarily to promote a
1077 specific political or social belief, as determined by the
1078 commissioner in his or her sole discretion;

1079 (iv) The organization may not have as its primary
1080 purpose the promotion of any specific faith, religion,
1081 religious belief or antireligion;

1082 (v) The name of the organization may not be the name of
1083 a special product or brand name, and may not be construed,
1084 as determined by the commissioner, as promoting a product
1085 or brand name; and

1086 (vi) The organization's lettering, logo, image or message
1087 to be placed on the registration plate, if created, may not be
1088 obscene, offensive or objectionable as determined by the
1089 commissioner in his or her sole discretion.

1090 (B) Beginning July 1, 2010, an organization requesting
1091 the creation and issuance of a special registration plate may
1092 make application with the division. The application shall
1093 include sufficient information, as determined by the

1094 commissioner, to determine whether the special registration
1095 plate requested and the organization making the application
1096 meet all of the requirements set forth in this subdivision (60).
1097 The application shall also include a proposed design,
1098 including lettering, logo, image or message to be placed on
1099 the registration plate. The commissioner shall notify the
1100 organization of the commissioner's approval or disapproval
1101 of the application.

1102 (C)(i) The commissioner may not begin the design or
1103 production of any license plates authorized and approved
1104 pursuant to this subdivision (60), subsection (c) of this
1105 section until the organization which applied for the special
1106 registration plate has collected and submitted collectively to
1107 the division applications completed by at least two hundred
1108 fifty persons and collectively deposited with the division all
1109 fees necessary to cover the first year's basic registration, one-
1110 time design and manufacturing costs and to cover the first
1111 year additional annual fee for all of the applications
1112 submitted.

1113 (ii) If the organization fails to submit the required number
1114 of applications and fees within six months of the effective
1115 date of the approval of the application for the plate by the
1116 commissioner, the plate will not be produced until a new
1117 application is submitted and is approved by the
1118 commissioner: *Provided,* That an organization that is
1119 unsuccessful in obtaining the minimum number of
1120 applications may not make a new application for a special
1121 plate until at least two years have passed since the approval
1122 of the previous application of the organization.

1123 (D) The division shall charge a special initial application
1124 fee of $25 for each special license plate in addition to all
1125 other fees required by law. This special fee shall be collected
1126 by the division and deposited in the State Road Fund.

1127 (E) The division shall charge an annual fee of $15 for
1128 each special registration plate in addition to all other fees
1129 required by this chapter.

1130 (F) Upon appropriate application, the division may issue
1131 a special registration plate designed by the commissioner in
1132 consultation with the organization for any number of vehicles
1133 titled in the name of a qualified registration plate applicant.
1134 Persons desiring the special registration plate shall offer
1135 sufficient proof of membership in the organization.

1136 (G) The commissioner shall discontinue the issuance or
1137 renewal of the registration of any special plate issued
1138 pursuant to this subdivision (60) if:

1139 (i) The number of valid registrations for the specialty
1140 plate falls below two hundred fifty plates for at least twelve
1141 consecutive months; or

1142 (ii) The organization no longer exists or no longer meets
1143 the requirements of this subdivision.

1144 (d) The minimum number of applications required prior
1145 to design and production of a special license plate shall be as
1146 follows:

1147 (1) The commissioner may not begin the design or
1148 production of any license plates for which eligibility is based
1149 on membership or affiliation with a particular private
1150 organization until at least one hundred persons complete an
1151 application and deposit with the organization a check to
1152 cover the first year's basic registration, one-time design and
1153 manufacturing costs and to cover the first year additional
1154 annual fee. If the organization fails to submit the required
1155 number of applications with attached checks within six
1156 months of the effective date of the original authorizing
1157 legislation, the plate will not be produced and will require
1158 legislative reauthorization: *Provided,* That an organization

or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: *Provided, however,* That the provisions of this subdivision (1) are not applicable to the issuance of plates authorized pursuant to subdivision (60), subsection (c) of this section.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which membership or affiliation with a particular organization is not required until at least two hundred fifty registrants complete an application and deposit a fee with the division to cover the first year's basic registration fee, one-time design and manufacturing fee and additional annual fee if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided,* That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(e) (1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second

special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of $10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special ten-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: *Provided,* That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the

1228 registration to indicate the year for which the vehicles have
1229 been properly registered or the date of expiration of the
1230 registration. The design and expiration of the plates shall be
1231 determined by the commissioner. The commissioner shall,
1232 whenever possible and cost effective, implement the latest
1233 technology in the design, production and issuance of
1234 registration plates, indices of registration renewal and vehicle
1235 ownership documents, including, but not limited to, offering
1236 Internet renewal of vehicle registration and the use of bar
1237 codes for instant identification of vehicles by scanning
1238 equipment to promote the efficient and effective coordination
1239 and communication of data for improving highway safety,
1240 aiding law enforcement and enhancing revenue collection.

1241 (i) Any license plate issued or renewed pursuant to this
1242 chapter which is paid for by a check that is returned for
1243 nonsufficient funds is void without further notice to the
1244 applicant. The applicant may not reinstate the registration
1245 until the returned check is paid by the applicant in cash,
1246 money order or certified check and all applicable fees
1247 assessed as a result thereof have been paid.

CHAPTER 136

(Com. Sub. for S. B. 186 -
By Senator Kessler)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §17C-5-2 and §17C-5-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17C-5-2b; to amend and reenact §17C-5A-1a, §17C-5A-2, §17C-5A-3 and §17C-

5A-3a of said code; to amend said code by adding thereto a new article, designated §17C-5C-1, §17C-5C-2, §17C-5C-3, §17C-5C-4 and §17C-5C-5; and to amend and reenact §61-11-22 and §61-11-25 of said code, all relating to the motor vehicle and traffic laws of the state; procedures for conditional probation, deferral and dismissal of criminal charges and expungement of arrest record for certain persons charged for the first time with a non-aggravated offense of driving under the influence of alcohol conditioned upon successful completion of the Motor Vehicle Alcohol Test and Lock Program; exempting from eligibility for said conditional probation persons originally charged with any aggravated offense of driving under the influence of alcohol, any controlled substance, or any other drug, persons holding commercial drivers' licenses or operating a commercial vehicle, and persons who have had their drivers' licenses previously revoked for driving under the influence of alcohol, any controlled substance or any other drug in any jurisdiction; providing procedures for termination of conditional probation upon violation of the terms thereof; exempting records maintained by the Division of Motor Vehicles from expungement; preserving criminal and administrative consequences for any subsequent charge of driving under the influence of alcohol; amending the hearing procedures; clarifying the effect of a no contest plea on the administrative license suspension process; requiring the state establish lawful arrest in administrative license suspension proceedings where applicable; providing that any determination of indigence made by the Department of Health and Human Resources for purposes of subsidized participation in the safety and treatment program applies to subsidization of participation in the motor vehicle alcohol test and lock program; creation of a special revenue account, known as the Department of Health and Human Resources Safety and Treatment Fund; making a one-time transfer of monies into the fund; providing rule-making authority; control and use of the fund by the agency; creating the Office of Administrative Hearings within the Department

of Transportation; appointment of Chief Hearing Examiner; providing for the organization and jurisdiction of the office; setting out hearing procedures; and providing for the transition of the hearing process from the Division of Motor Vehicles to the Office of Administrative Hearings.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 and §17C-5-7 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 §17C-5-2b; that §17C-5A-1a, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §17C-5C-1, §17C-5C-2, §17C-5C-3, §17C-5C-4 and §17C-5C-5; and that §61-11-22 and §61-11-25 of said code be amended and reenacted, all to read as follows:

Chapter

17C. Traffic Regulations and Laws of the Road.
61. Crimes and their Punishment.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

5. Serious Traffic Offenses.
5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.
5C. Office of Administrative Hearings.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.
§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two years nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug;

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the

vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, except as provided in section two-b of this article, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is

79 guilty of a misdemeanor and, upon conviction thereof, shall
80 be confined in jail for not less than two days nor more than
81 six months, which jail term is to include actual confinement
82 of not less than twenty-four hours, and shall be fined not less
83 than two hundred dollars nor more than one thousand dollars.
84 A person sentenced pursuant to this subdivision shall receive
85 credit for any period of actual confinement he or she served
86 upon arrest for the subject offense.

87 (f) Any person who, being an habitual user of narcotic
88 drugs or amphetamine or any derivative thereof, drives a
89 vehicle in this state is guilty of a misdemeanor and, upon
90 conviction thereof, shall be confined in jail for not less than
91 one day nor more than six months, which jail term is to
92 include actual confinement of not less than twenty-four
93 hours, and shall be fined not less than one hundred dollars
94 nor more than five hundred dollars. A person sentenced
95 pursuant to this subdivision shall receive credit for any period
96 of actual confinement he or she served upon arrest for the
97 subject offense.

98 (g) Any person who:

99 (1) Knowingly permits his or her vehicle to be driven in
100 this state by any other person who:

101 (A) Is under the influence of alcohol;

102 (B) Is under the influence of any controlled substance;

103 (C) Is under the influence of any other drug;

104 (D) Is under the combined influence of alcohol and any
105 controlled substance or any other drug;

106 (E) Has an alcohol concentration in his or her blood of
107 eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(i) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(j) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in

171 its discretion, impose a fine of not less than one thousand
172 dollars nor more than three thousand dollars.

173 (l) A person violating any provision of subsection (b), (c),
174 (d), (e), (f), (g) or (i) of this section, for the third or any
175 subsequent offense under this section, is guilty of a felony
176 and, upon conviction thereof, shall be imprisoned in a state
177 correctional facility for not less than one nor more than three
178 years and the court may, in its discretion, impose a fine of not
179 less than three thousand dollars nor more than five thousand
180 dollars.

181 (m) For purposes of subsections (k) and (l) of this section
182 relating to second, third and subsequent offenses, the
183 following events shall be regarded as offenses under this
184 section:

185 (1) Any conviction under the provisions of subsection (a),
186 (b), (c), (d), (e), (f) or (g) of this section or under a prior
187 enactment of this section for an offense which occurred
188 within the ten-year period immediately preceding the date of
189 arrest in the current proceeding;

190 (2) Any conviction under a municipal ordinance of this
191 state or any other state or a statute of the United States or of
192 any other state of an offense which has the same elements as
193 an offense described in subsection (a), (b), (c), (d), (e), (f),
194 (g) or (h) of this section, which offense occurred within the
195 ten-year period immediately preceding the date of arrest in
196 the current proceeding; and

197 (3) Any period of conditional probation imposed pursuant
198 section two-b of this article for violation of subsection (d) of
199 this article, which violation occurred within the ten-year
200 period immediately preceding the date of arrest in the current
201 proceeding.

(n) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to section two-b of this article.

(o) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f) of this section, or any person permitted to drive as described under subsection (g) or (h) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section.

(p) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in chapter sixty-a of this code.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided, however*, That the court may impose a term of conditional probation pursuant to section two-b of this article to persons adjudicated thereunder. An order for

home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided further,* That for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: *And provided further,* That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.

§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.

(a) Except as provided in subsection (g) of this section, whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug:

(1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and

(2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (d), section two of this article, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further

13 proceedings and, notwithstanding any provisions of this code
14 to the contrary, place him or her on probation, which
15 conditions shall include, that he or she successfully
16 completes the Motor Vehicle Alcohol Test and Lock Program
17 as provided in section three-a, article five-a of this chapter.
18 Participation therein shall be for a period of at least one
19 hundred and sixty-five days after he or she has served the
20 fifteen days of license suspension imposed pursuant to
21 section two, article five-a of this chapter.

22 (b) A defendant's election to participate in deferral under
23 this section shall constitute a waiver of his or her right to an
24 administrative hearing as provided in section two, article
25 five-a, of this chapter.

26 (c) (1) If the prosecuting attorney files a motion alleging
27 that the defendant during the period of the Motor Vehicle
28 Alcohol Test and Lock program has been removed therefrom
29 by the Division of Motor Vehicles, or has failed to
30 successfully complete the program before making a motion
31 for dismissal pursuant to subsection (d) of this section, the
32 court may issue such process as is necessary to bring the
33 defendant before the court.

34 (2) A motion alleging such violation filed pursuant to
35 subdivision (1) must be filed during the period of the Motor
36 Vehicle Alcohol Test and Lock Program or, if filed
37 thereafter, must be filed within a reasonable time after the
38 alleged violation was committed.

39 (3) When the defendant is brought before the court, the
40 court shall afford the defendant an opportunity to be heard.
41 If the court finds that the defendant has been rightfully
42 removed from the Motor Vehicle Alcohol Test and Lock
43 Program by the Division of Motor Vehicles, the court may
44 order, when appropriate, that the deferral be terminated, and
45 thereupon enter an adjudication of guilt and proceed as
46 otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable Federal or State constitutional provisions, statutes or rules of court during the period of enrollment in the program.

(d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within 30 days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the 30-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) of this section.

(e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in article five-a of this chapter. Except as provided in subsection (k), (l) and (m), section two of this article regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be

guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (m), section two of this article.

(f) There may be only one discharge and dismissal under this section with respect to any person.

(g) No person shall be eligible for dismissal and discharge under this section: (1) in any prosecution in which any violation of any other provision of this article has been charged;(2)if the person holds a commercial driver's license or operates commercial motor vehicle(s), or (3)the person has previously had his or her driver's license revoked under section two-a of this article or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug.

(h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within 30 days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection(d), section two, article five of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of subsection (j), section two, article five of this chapter. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of this code.

§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: *Provided,* That prior to the refusal, the person is given an oral warning and a written statement advising him or her that his or her refusal to submit to the secondary test finally designated will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least forty-five days and up to life; and that after fifteen minutes following the warnings the

refusal is considered final. The arresting officer after that period of time expires has no further duty to provide the person with an opportunity to take the secondary test. The officer shall, within forty-eight hours of the refusal, sign and submit to the Commissioner of Motor Vehicles a written statement of the officer that: (1) He or she had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated in the manner provided in section four of this article; and (4) the person was given a written statement advising him or her that his or her license to operate a motor vehicle in this state would be revoked for a period of at least forty-five days and up to life if he or she refused to submit to the secondary test finally designated in the manner provided in section four of this article. The signing of the statement required to be signed by this section constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor. Upon receiving the statement the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state for the period prescribed by this section.

For the first refusal to submit to the designated secondary chemical test, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of one year or forty-five days, with an additional one year of participation in the Motor Vehicle

Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a of this chapter: *Provided,* That a person revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be considered to be a waiver of the hearing provided in section two of said article. If the person's license has previously been revoked under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of ten years: *Provided, however,* That the license may be reissued in five years in accordance with the provisions of section three, article five-a of this chapter. If the person's license has previously been revoked more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, make and enter an order revoking the person's license to operate a motor vehicle in this state for a period of life. A copy of each order shall be forwarded to the person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation and shall specify the revocation period imposed pursuant to this section. A revocation shall not become effective until ten days after receipt of the copy of the order. Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or her blood, breath or urine as provided in section four of this article and the test may be administered although the person is not informed that his or her failure to submit to the test will result in the revocation of his or her license to operate a motor vehicle in this state for the period provided for in this section. A revocation under this section shall run concurrently with the period of any suspension or revocation imposed in accordance with other provisions of this code and

growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally designated in accordance with the provisions of section four of this article.

(b) For the purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of suspensions or revocations shall also be regarded as suspensions or revocations under this section:

(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two of this article for conduct which occurred on or after June 10, 1983; and

(2) Any revocation under the provisions of section one or two, article five-a of this chapter for conduct which occurred on or after June 10, 1983.

(c) A person whose license to operate a motor vehicle in this state has been revoked shall be afforded an opportunity to be heard, in accordance with the provisions of section two, article five-a of this chapter.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.
§17C-5A-2. Hearing; revocation; review.

§17C-5A-3. Safety and treatment program; reissuance of license.
§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

(a) If a person has a term of conditional probation imposed pursuant to section two-b, article five of this chapter, or is convicted for an offense defined in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, and if the person does not act to appeal the conviction within the time periods described in subsection (b) of this section, the person's license to operate a motor vehicle in this state shall be revoked or suspended in accordance with the provisions of this section.

(b) The clerk of the court in which a person has had a term of conditional probation imposed pursuant to section two-b, article five of this chapter, or is convicted for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward

the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the term of conditional probation is the act of a magistrate court, the magistrate court clerk shall forward the transcript when the order imposing the term of conditional probation is entered. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the transcript when the person convicted has not perfected an appeal within ten days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(c) If, upon examination of the transcript of the judgment of conviction, or imposition of a term of conditional probation pursuant to section two-b, article five of this chapter, the commissioner determines that the person was convicted for an offense described in section two, article five of this chapter or had a period of conditional probation imposed pursuant to section two-b, article five of this chapter, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. If the commissioner determines that the person was convicted of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than

eight hundredths of one percent, by weight, the commissioner shall make and enter an order suspending the person's license to operate a motor vehicle in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for in section two of this article. Further, the order shall give the procedures for requesting a hearing which is to be held in accordance with the provisions of said section. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

(d) The provisions of this section shall not apply if an order reinstating the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction.

(e) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction for purposes of this section except where the person holds a commercial drivers' license or operates a commercial vehicle.

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article

or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person or by registered or certified mail, return receipt requested, within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. Upon consideration of the designated record, the hearing examiner shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested.

(b) The hearing shall be held at an office of the Division of Motor Vehicles located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. The Office of Administrative Hearings shall send a notice of hearing to the person whose license is at issue, the appropriate law-enforcement officers, and the prosecuting attorney.

(c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.

(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon

application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) A notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, constitutes a subpoena to appear at the hearing without the necessity of payment of fees by the Division of Motor Vehicles.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by

weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or

failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving

did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: *Provided,* That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: *Provided*, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of

participation imposed by the commissioner: *Provided, however,* That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: *Provided further,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *And provided further,* That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) (1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of article three-a, article five-a, chapter seventeen-c of this code: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person's license has previously been suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with

an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol,

controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: *Provided,* That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however,* That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That

this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administrative Hearings finds to the contrary with respect to the above issues the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings' findings of fact and conclusions of law made and entered following the hearing shall be served upon the person whose license is at issue and the commissioner by registered or certified mail, return receipt requested. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter

389 twenty-nine-a of this code. Neither the Commissioner nor
390 the Office of Administrative Hearings may stay enforcement
391 of the order. The court may grant a stay or supersede as of
392 the order only upon motion and hearing, and a finding by the
393 court upon the evidence presented, that there is a substantial
394 probability that the appellant shall prevail upon the merits
395 and the appellant will suffer irreparable harm if the order is
396 not stayed: *Provided,* That in no event shall the stay or
397 supersede as of the order exceed one hundred fifty days.
398 Notwithstanding the provisions of section four, article five of
399 said chapter, the Office of Administrative Hearings may not
400 be compelled to transmit a certified copy of the file or the
401 transcript of the hearing to the circuit court in less than sixty
402 days.

403 (t) In any revocation or suspension pursuant to this
404 section, if the driver whose license is revoked or suspended
405 had not reached the driver's eighteenth birthday at the time of
406 the conduct for which the license is revoked or suspended,
407 the driver's license shall be revoked or suspended until the
408 driver's eighteenth birthday or the applicable statutory period
409 of revocation or suspension prescribed by this section,
410 whichever is longer.

411 (u) Funds for this section's hearing and appeal process
412 may be provided from the Drunk Driving Prevention Fund,
413 as created by section forty-one, article two, chapter fifteen of
414 this code, upon application for the funds to the Commission
415 on Drunk Driving Prevention.

*§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The Department of Health and Human Resources,
2 Division of Alcoholism and Drug Abuse shall administer a

*CLERK'S NOTE: This section was also amended by H. B. 4167 (Chapter 5) which passed prior to this act.

comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code and shall also establish the minimum qualifications for mental health facilities, day report centers, community correction centers or other public agencies or private entities conducting the safety and treatment program: *Provided,* That the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving or other safety driving instruction and other programs designed to properly educate, train and rehabilitate the offender.

(c) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall provide for the preparation of an educational and treatment the program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The

38 program shall be prepared by persons knowledgeable in the
39 diagnosis of alcohol or drug abuse and treatment.

40 (d) There is hereby created a special revenue account
41 within the State Treasury known as the Department of Health
42 and Human Resources Safety and Treatment Fund. The
43 account shall be administered by the Secretary of the
44 Department of Health and Human Resources for the purpose
45 of administering the comprehensive safety and treatment
46 program established by subsection (a) of this section. The
47 account may be invested, and all earnings and interest
48 accruing shall be retained in the account. The Auditor shall
49 conduct an audit of the fund at least every three fiscal years.

50 Effective July 1, 2010, the State Treasurer shall make a
51 one-time transfer of $250,000 from the Motor Vehicle Fees
52 Fund into the Department of Health and Human Resources
53 Safety and Treatment Fund.

54 (e) (1) The program provider shall collect the established
55 fee from each participant upon enrollment unless the
56 department has determined that the participant is an indigent
57 based upon criteria established pursuant to legislative rule
58 authorized in this section.

59 (2) If the department determined that a participant is an
60 indigent based upon criteria established pursuant to the
61 legislative rule authorized by this section, the department
62 shall provide the applicant with proof of its determination
63 regarding indigency, which proof the applicant shall present
64 to the interlock provider as part of the application process
65 provided in section three-a of this article and/or the rules
66 promulgated pursuant thereto.

67 (3) Program providers shall remit to the Department of
68 Health and Human Resources a portion of the fee collected,
69 which shall be deposited by the Secretary of the Department

of Health and Human Resources into the Department of Health and Human Resources Safety and Treatment Fund. The Department of Health and Human Resources shall reimburse enrollment fees to program providers for each eligible indigent offender.

(f) On or before January 15 of each year, the Secretary of the Department of Health and Human Resources shall report to the Legislature on:

(1) The total number of offenders participating in the safety and treatment program during the prior year;

(2) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(3) The total number of program providers during the prior year; and

(4) The total amount of reimbursements paid to program provider during the prior year.

(g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall include successful completion of the educational, treatment or rehabilitation program, subject to the following:

(1) When the period of revocation is six months, the license to operate a motor vehicle in this State may not be reissued until: (A) At least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has

100 successfully completed the program; (C) all costs of the
101 program and administration have been paid; and (D) all costs
102 assessed as a result of a revocation hearing have been paid.

103 (2) When the period of revocation is for a period of one
104 year or for more than a year, the license to operate a motor
105 vehicle in this state may not be reissued until: (A) At least
106 one-half of the time period has elapsed from the date of the
107 initial revocation, during which time the revocation was
108 actually in effect; (B) the offender has successfully
109 completed the program; (C) all costs of the program and
110 administration have been paid; and (D) all costs assessed as
111 a result of a revocation hearing have been paid.
112 Notwithstanding any provision in this code, a person whose
113 license is revoked for refusing to take a chemical test as
114 required by section seven, article five of this chapter for a
115 first offense is not eligible to reduce the revocation period by
116 completing the safety and treatment program.

117 (3) When the period of revocation is for life, the license
118 to operate a motor vehicle in this State may not be reissued
119 until: (A) At least ten years have elapsed from the date of the
120 initial revocation, during which time the revocation was
121 actually in effect; (B) the offender has successfully
122 completed the program; (C) all costs of the program and
123 administration have been paid; and (D) all costs assessed as
124 a result of a revocation hearing have been paid.

125 (4) Notwithstanding any provision of this code or any
126 rule, any mental health facilities or other public agencies or
127 private entities conducting the safety and treatment program
128 when certifying that a person has successfully completed a
129 safety and treatment program shall only have to certify that
130 the person has successfully completed the program.

131 (h) (1) The Department of Health and Human Resources,
132 Division of Alcoholism and Drug Abuse shall provide for the

133 preparation of an educational program for each person whose
134 license has been suspended for sixty days pursuant to the
135 provisions of subsection (n), section two, article five-a of this
136 chapter. The educational program shall consist of not less
137 than twelve nor more than eighteen hours of actual classroom
138 time.

139 (2) When a sixty-day period of suspension has been
140 ordered, the license to operate a motor vehicle may not be
141 reinstated until: (A) At least sixty days have elapsed from the
142 date of the initial suspension, during which time the
143 suspension was actually in effect; (B) the offender has
144 successfully completed the educational program; (C) all costs
145 of the program and administration have been paid; and (D) all
146 costs assessed as a result of a suspension hearing have been
147 paid.

148 (i) A required component of the treatment program
149 provided in subsection (b) of this section and the education
150 program provided for in subsection (c) of this section shall be
151 participation by the violator with a victim impact panel
152 program providing a forum for victims of alcohol and drug-
153 related offenses and offenders to share first-hand experiences
154 on the impact of alcohol and drug-related offenses in their
155 lives. The Department of Health and Human Resources,
156 Division of Alcoholism and Drug Abuse shall propose and
157 implement a plan for victim impact panels where appropriate
158 numbers of victims are available and willing to participate
159 and shall establish guidelines for other innovative programs
160 which may be substituted where the victims are not available
161 to assist persons whose licenses have been suspended or
162 revoked for alcohol and drug-related offenses to gain a full
163 understanding of the severity of their offenses in terms of the
164 impact of the offenses on victims and offenders. The plan
165 shall require, at a minimum, discussion and consideration of
166 the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or offenders;

(C) Psychological injuries suffered by victims or offenders;

(D) Changes in the personal welfare or familial relationships of victims or offenders; and

(E) Other information relating to the impact of alcohol and drug-related offenses upon victims or offenders.

The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

(j)(1) The Secretary of the Department of Health and Human Resources shall promulgate a rule for legislative approval in accordance with article three, chapter twenty-nine-a of this code to administer the provisions of this section and establish a fee to be collected from each offender enrolled in the safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program providers of required fees for the safety and treatment program for indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary application forms; and (B) program standards that encompass provider criteria including minimum professional training requirements for providers, curriculum approval, minimum course length requirements and other items that may be necessary to properly implement the provisions of this section.

(2) The Legislature finds that an emergency exists and, therefore, the Secretary shall file by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(k) Nothing in this section may be construed to prohibit day report or community correction programs, authorized pursuant to article eleven-c, chapter sixty-two of this code, from administering a comprehensive safety and treatment program pursuant to this section.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a)(1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter, or who are serving a term of a conditional probation pursuant to section two-b, article five of this chapter.

(2) The program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the Driver's Rehabilitation Fund: Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver's Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(3) (A) Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol Test and Lock Program.

20 (B) The Commissioner of the Division of Motor Vehicles
21 shall propose legislative rules for promulgation in accordance
22 with the provisions of chapter twenty-nine-a of this code for
23 the purpose of implementing the provisions of this section.
24 The rules shall also prescribe those requirements which, in
25 addition to the requirements specified by this section for
26 eligibility to participate in the program, the commissioner
27 determines must be met to obtain the commissioner's
28 approval to operate a motor vehicle equipped with a motor
29 vehicle alcohol test and lock system.

30 (C) Nothing in this section may be construed to prohibit
31 day report or community correction programs authorized
32 pursuant to article eleven-c, chapter sixty-two of this code, or
33 a home incarceration program authorized pursuant to article
34 eleven-B, chapter sixty-two of this code, from being a
35 provider of motor vehicle alcohol test and lock systems for
36 eligible participants as authorized by this section.

37 (4) For purposes of this section, a "motor vehicle alcohol
38 test and lock system" means a mechanical or computerized
39 system which, in the opinion of the commissioner, prevents
40 the operation of a motor vehicle when, through the system's
41 assessment of the blood alcohol content of the person
42 operating or attempting to operate the vehicle, the person is
43 determined to be under the influence of alcohol.

44 (5) The fee for installation and removal of ignition
45 interlock devices shall be waived for persons determined to
46 be indigent by the Department of Health and Human
47 Resources pursuant to section three, article five-a, chapter
48 seventeen-c of this code. The commissioner shall establish
49 by legislative rule, proposed pursuant to article three, chapter
50 twenty-nine-a of this code, procedures to be followed with
51 regard to persons determined by the Department of Health
52 and Human Resources to be indigent. The rule shall include,
53 but is not limited to, promulgation of application forms;

54 establishment of procedures for the review of applications;
55 and the establishment of a mechanism for the payment of
56 installations for eligible offenders.

57 (6) On or before January 15 of each year, the Commissioner
58 of the Division of Motor Vehicles shall report to the
59 Legislature on:

60 (A) The total number of offenders participating in the
61 program during the prior year;

62 (B) The total number of indigent offenders participating
63 in the program during the prior year;

64 (C) The terms of any contracts with the providers of
65 ignition interlock devices; and

66 (D) The total cost of the program to the state during the
67 prior year.

68 (b)(1) Any person whose license is revoked for the first
69 time pursuant to this article or the provisions of article five of
70 this chapter is eligible to participate in the program when the
71 person's minimum revocation period as specified by
72 subsection (c) of this section has expired and the person is
73 enrolled in or has successfully completed the safety and
74 treatment program or presents proof to the commissioner
75 within sixty days of receiving approval to participate by the
76 commissioner that he or she is enrolled in a safety and
77 treatment program: *Provided,* That anyone whose license is
78 revoked for the first time pursuant to subsection (k), section
79 two of this article must participate in the program when the
80 person's minimum revocation period as specified by
81 subsection (c) of this section has expired and the person is
82 enrolled in or has successfully completed the safety and
83 treatment program or presents proof to the commissioner
84 within sixty days of receiving approval to participate by the

commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: *Provided,* That in the case of a person under the age of eighteen, the person is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person's eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program provided in subsection (d), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

118 (c) A person who participates in the program under
119 subdivision (1), subsection (b) of this section is subject to a
120 minimum revocation period and minimum period for the use
121 of the ignition interlock device as follows:

122 (1) For a person whose license has been revoked for a
123 first offense for six months pursuant to the provisions of
124 section one-a of this article for conviction of an offense
125 defined in subsection (d) or (g), section two, article five of
126 this chapter or pursuant to subsection (j), section two of this
127 article, the minimum period of revocation for participation in
128 the test and lock program is fifteen days and the minimum
129 period for the use of the ignition interlock device is one
130 hundred and twenty-five days;

131 (2) For a person whose license has been revoked for a
132 first offense pursuant to section seven, article five of this
133 chapter, the minimum period of revocation for participation
134 in the test and lock program is forty-five days and the
135 minimum period for the use of the ignition interlock device
136 is one year;

137 (3) For a person whose license has been revoked for a
138 first offense pursuant to section one-a of this article for
139 conviction of an offense defined in subsection (e), section
140 two, article five of this chapter or pursuant to subsection (j),
141 section two of this article, the minimum period of revocation
142 for participation in the test and lock program is forty-five
143 days and the minimum period for the use of the ignition
144 interlock device is two hundred seventy days;

145 (4) For a person whose license has been revoked for a
146 first offense pursuant to the provisions of section one-a of
147 this article for conviction of an offense defined in subsection
148 (a), section two, article five of this chapter or pursuant to
149 subsection (f), section two of this article, the minimum period
150 of revocation before the person is eligible for participation in

the test and lock program is twelve months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (b), section two, article five of this chapter or pursuant to subsection (g), section two of this article, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (c), section two, article five of this chapter or pursuant to subsection (h), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (j), section two, article five of this chapter or pursuant to subsection (m), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is ten months;

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person's license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or his or her license was revoked under any provision cited in this

subsection within the past ten years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation of subsection (n), section two of this article or subsection (i), section two, article five of this chapter is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person's death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e) Notwithstanding any other provision in this code, a person whose license is revoked for driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program.

(f) An applicant for the test and lock program may not have been convicted of any violation of section three, article four, chapter seventeen-b of this code for driving while the applicant's driver's license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program unless such is necessary for employment purposes.

(g) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver's license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(h) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to section two-b, article five of this chapter must be removed therefrom for violation(s) of the terms and conditions thereof, he shall notify the person, the court that imposed the term of participation in the program, and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(i) A person whose license has been suspended pursuant to the provisions of subsection (n), section two of this article who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all other records pertaining to the suspension shall be expunged by operation of law: Provided, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely

sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(j) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during that person's participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, job site does not include any street or highway open to the use of the public for purposes of vehicular traffic.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-1. Office created; appointment of Chief Hearing Examiner.
§17C-5C-2. Organization of Office.
§17C-5C-3. Jurisdiction of Office of Administrative Hearings.
§17C-5C-4. Hearing Procedures.
§17C-5C-5. Transition from Division of Motor Vehicles to the Office of Administrative Hearings.

§17C-5C-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the Department of Transportation.

(b) The Governor, with the advice and consent of the senate, shall appoint a director of the office who shall serve as the administrative head of the office and as chief hearing examiner.

(c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the Secretary of the Department of Transportation. The salary shall be within the salary range for comparable administrators as determined by the State Personnel Board created by section six, article six, chapter twenty-nine of this code.

(e) The Chief Hearing Examiner during his or her term shall:

(1) Devote his or her full time to the duties of the position;

(2) Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law: *Provided,* That nothing in this paragraph may be construed to prohibit the Chief Hearing Examiner from being a member of a national, state or local bar association or committee, or of any other similar group or organization, or to prohibit the Chief Hearing Examiner from engaging in the practice of law by representing himself,

herself or his or her immediate family in their personal affairs in matters not subject to this article;

(3) Not engage directly or indirectly in any activity, occupation or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

(4) Not hold any other appointed public office or any elected public office or any other position of public trust; and

(5) Not be a candidate for any elected public office, or serve on or under any committee of any political party.

(f) The Governor may remove the Chief Hearing Examiner only for incompetence, neglect of duty, official misconduct or violation of subsection (e) of this section, and removal shall be in the same manner as that specified for removal of elected state officials in section six, article six, chapter six of this code.

(g) The term of the Chief Hearing Examiner shall be six years. A person holding the position of Chief Hearing Examiner may be reappointed to that position subject to the provisions of subsection (b).

§17C-5C-2. Organization of Office.

(a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative Hearings and he or she may employ hearing examiners and other clerical personnel necessary for the proper administration of this article.

(1) The Chief Hearing Examiner may delegate administrative duties to other employees, but the Chief Hearing Examiner shall be responsible for all official delegated acts.

(2) All employees of the Office of Administrative Hearings, except the Chief Hearing Examiner, shall be in the classified service and shall be governed by the provisions of the statutes, rules and policies of the classified service in accordance with the provisions of article six, chapter twenty-nine of this code.

(3) Notwithstanding any provision of this code to the contrary, those persons serving as hearing examiners within the Division of Motor Vehicles on the effective date of this article as enacted during the Regular Session of the 2010 Legislature, shall be eligible and given first preference in hiring as hearing examiners pursuant to this article.

(b) The Chief Hearing Examiner shall:

(1) Direct and supervise the work of the office staff;

(2) Make hearing assignments;

(3) Maintain the records of the office;

(4) Review and approve decisions of hearing examiners as to legal accuracy, clarity and other requirements;

(5) Submit to the Legislature, on or before the fifteenth day of February, an annual report summarizing the office's activities since the end of the last report period, including a statement of the number and type of matters handled by the office during the preceding fiscal year and the number of matters pending at the end of the year; and

(6) Perform the other duties necessary and proper to carry out the purposes of this article.

(c) The administrative expenses of the office shall be included within the annual budget of the Department of Transportation.

§17C-5C-3. Jurisdiction of Office of Administrative Hearings.

The Office of Administrative Hearings jurisdiction to hear and determine all:

(1) Appeals from an order of the Commissioner of the Division of Motor Vehicles suspending a license pursuant to section eight, article two-b, chapter seventeen-b of this code;

(2) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles suspending or revoking a license pursuant to sections three-c, six and twelve, article three, chapter seventeen-b of this code;

(3) Appeals from orders of the Commissioner of the Division of Motor Vehicles pursuant to section two, article five-a, of this chapter, revoking or suspending a license under the provisions of section one of this article or section seven, article five of chapter;

(4) Appeals from decisions or orders of the Commissioner of the Division of Motor Vehicles denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law contained in chapters seventeen-b and seventeen-c that are administered by the Commissioner of the Division of Motor Vehicles; and

(5) Other matters which may be conferred on the office by statute or legislatively approved rules.

§17C-5C-4. Hearing Procedures.

(a) A hearing before the office shall be heard de novo and conducted pursuant to the provisions of the contested case procedure set forth in article five, chapter twenty-nine-a of this code to the extent not inconsistent with the provisions of

5 chapters seventeen-b and seventeen-c of this code. In case of
6 conflict, the provisions of chapters seventeen-b and
7 seventeen-c of this code shall govern.

8 (b) Notwithstanding any provision of this code to the
9 contrary, the Commissioner of the Division of Motor
10 Vehicles may be represented at hearings conducted by the
11 Office and evidence submitted by the commissioner may be
12 considered in such hearings with or without such
13 representation.

14 (c) The West Virginia Rules of Evidence governing
15 proceedings in the courts of this state shall be given like
16 effect in hearings held before a hearing examiner. All
17 testimony shall be given under oath.

18 (d) Except as otherwise provided by this code or
19 legislative rules, the Commissioner of Motor Vehicles has the
20 burden of proof.

21 (e) The hearing examiner may request proposed findings
22 of fact and conclusions of law from the parties prior to the
23 issuance by the office of the decision in the matter.

24 (f) Hearings shall be exempt from the requirements of
25 article one, chapter twenty-nine-b of this code.

§17C-5C-5. Transition from Division of Motor Vehicles to the Office of Administrative Hearings.

1 (a) In order to implement an orderly and efficient
2 transition of the administrative hearing process from the
3 Division of Motor Vehicles to the Office of Administrative
4 Hearings, the Secretary of the Department of Transportation
5 may establish interim policies and procedures for the transfer
6 of administrative hearings for appeals from decisions or
7 orders of the Commissioner of the Division of Motor

8 Vehicles denying, suspending, revoking, refusing to renew
9 any license or imposing any civil money penalty for violating
10 the provisions of any licensing law contained in chapters,
11 seventeen-a, seventeen-b, seventeen-c, seventeen-d and
12 seventeen-e of this code, currently administered by the
13 Commissioner of the Division of Motor Vehicles, no later
14 than October 1, 2010.

15 (b) On the effective date of this article, all equipment and
16 records necessary to effectuate the purposes of this article
17 shall be transferred from the Division of Motor Vehicle to the
18 Office of Administrative Hearings: *Provided*, That in order
19 to provide for a smooth transition, the Secretary of
20 Transportation may establish interim policies and procedures,
21 determine how the equipment and records are to be
22 transferred and provide that the transfers provided for in this
23 subsection take effect no later than October 1, 2010.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.
§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or
2 a person acting as a special prosecutor may enter into a
3 pretrial diversion agreement with a person under
4 investigation or charged with an offense against the state of
5 West Virginia, when he or she considers it to be in the
6 interests of justice. The agreement is to be in writing and is
7 to be executed in the presence of the person's attorney, unless
8 the person has executed a waiver of counsel.

9 (b) Any agreement entered into pursuant to the provisions
10 of subsection (a) of this section may not exceed twenty-four
11 months in duration. The duration of the agreement must be
12 specified in the agreement. The terms of any agreement
13 entered into pursuant to the provisions of this section may
14 include conditions similar to those set forth in section nine,
15 article twelve, chapter sixty-two of this code relating to
16 conditions of probation. The agreement may require
17 supervision by a probation officer of the circuit court, with
18 the consent of the court. An agreement entered into pursuant
19 to this section must include a provision that the applicable
20 statute of limitations be tolled for the period of the
21 agreement.

22 (c) A person who has entered into an agreement for pretrial
23 diversion with a prosecuting attorney and who has successfully
24 complied with the terms of the agreement is not subject to
25 prosecution for the offense or offenses described in the
26 agreement or for the underlying conduct or transaction
27 constituting the offense or offenses described in the agreement,
28 unless the agreement includes a provision that upon compliance
29 the person agrees to plead guilty or nolo contendere to a specific
30 related offense, with or without a specific sentencing
31 recommendation by the prosecuting attorney.

32 (d) No person charged with a violation of the provisions
33 of section two, article five, chapter seventeen-c of this code
34 may participate in a pretrial diversion program: *Provided*,
35 That a court may defer proceedings in accordance with
36 section two-b, article five, chapter seventeen-c of this code.
37 No person charged with a violation of the provisions of
38 section twenty-eight, article two of this chapter may
39 participate in a pretrial diversion program unless the program
40 is part of a community corrections program approved
41 pursuant to the provisions of article eleven-c, chapter
42 sixty-two of this code. No person indicted for a felony crime
43 of violence against the person where the alleged victim is a
44 family or household member as defined in section two

hundred three, article twenty-seven, chapter forty-eight of this code or indicted for a violation of the provisions of sections three, four or seven, article eight-b of this chapter is eligible to participate in a pretrial diversion program. No defendant charged with a violation of the provisions of section twenty-eight, article two of this chapter or subsections (b) or (c), section nine, article two of this chapter where the alleged victim is a family or household member is eligible for pretrial diversion programs if he or she has a prior conviction for the offense charged or if he or she has previously been granted a period of pretrial diversion pursuant to this section for the offense charged. Notwithstanding any provision of this code to the contrary, defendants charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code or the provisions of subsection (b) or (c), section nine, article two of said chapter where the alleged victim is a family or household member as defined by the provisions of section two hundred three, article twenty-seven, chapter forty-eight of this code are ineligible for participation in a pretrial diversion program before the July 1, 2002, and before the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven-c, chapter sixty-two of this code, in consultation with the working group of the subcommittee, has approved guidelines for a safe and effective program for diverting defendants charged with domestic violence.

(e) The provisions of section twenty-five of this article are inapplicable to defendants participating in pretrial diversion programs who are charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code. The community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven-c, chapter sixty-two of this code shall, upon approving any program of pretrial

diversion for persons charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code, establish and maintain a central registry of the participants in the programs which may be accessed by judicial officers and court personnel.

§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed.

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense, may make a motion in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge or other matters arising out of the arrest or charge: *Provided*, That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to section two-b, article five, chapter seventeen-c of this code: *Provided further*, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references or other data whether in documentary or electronic form, relating to the arrest, charge or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of article twelve, chapter fifteen of this code because the person was found not guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions of this section.

(b) The expungement motion shall be filed not sooner than sixty days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or

her rights to make a motion for expungement pursuant to this section.

(c) Following the filing of the motion, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the motion and provide an opportunity for a response to the expungement motion.

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law-enforcement records. Every agency with records relating to the arrest, charge or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within sixty days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(e) Upon expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application.

(f) Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

CHAPTER 137

**(Com. Sub. for S. B. 183 -
By Senator D. Facemire)**

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-13A-1, §17C-13A-2, §17C-13A-3, §17C-13A-4, §17C-13A-5, §17C-13A-6, §17C-13A-7, §17C-13A-8 and §17C-13A-9, all relating to prohibiting diesel-powered motor vehicles from excessive idling; defining terms; placing restrictions on idling; providing exceptions to idling restrictions; allowing for weight adjustments for idle reduction technology; establishing a misdemeanor offense of excessive idling on the owners and operators of the vehicles in violation of the idling restrictions; establishing a misdemeanor offense for the allowance of excessive idling in violation of the idling restrictions by owners and operators of a location where such vehicles load, unload or park; providing criminal penalties; requiring the owner or operation of certain locations to post notice of the idling restrictions; providing for notice of offense to the vehicle owner of driver convictions for offenses; providing for enforcement by any member of the Division of Public Safety, any sheriff or deputy sheriff, any member of a municipal police department and any designated officers of the Public Service Commission; preempting local ordinances; and allowing for additional regulation of motor vehicle emissions by the Division of Environmental Protection.

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 §17C-13A-1, §17C-13A-2, §17C-13A-3, §17C-13A-4, §17C-13A-5, §17C-13A-6, §17C-13A-7, §17C-13A-8 and §17C-13A-9, all to read as follows:

ARTICLE 13A. DIESEL-POWERED MOTOR VEHICLE IDLING ACT.

§17C-13A-1. Definitions.
§17C-13A-2. Restrictions.
§17C-13A-3. Exceptions.
§17C-13A-4. Increase of weight limit.
§17C-13A-5. Penalties.
§17C-13A-6. Notification.
§17C-13A-7. Enforcement.
§17C-13A-8. Permanent idling restriction signs.
§17C-13A-9. Preemption.

§17C-13A-1. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Bus" means the same as that term is defined in section thirteen, article one, chapter seventeen of this code.

(b) "Bus depot" means a location where buses are routinely kept overnight, including any garage structure or outdoor bus parking area or both.

(c) "Commission" or "public service commission" means the public service commission of West Virginia.

(d) "Diesel powered" means a type of engine that has operating characteristics significantly similar to the theoretical diesel combustion cycle.

14 (e) "Farm tractor" means the same as that term is defined
15 in section ten, article one of this chapter.

16 (f) "Highway" means the same as that term is defined
17 under section three, article one, chapter seventeen of this
18 code.

19 (g) "Idle reduction technology" means any device or
20 system of devices that is installed on a motor vehicle subject
21 to this article and is designed to provide it those services,
22 such as heat, air conditioning and electricity, that would
23 otherwise require the operation of the main drive engine
24 while the motor vehicle is temporarily parked or remains
25 stationary.

26 (h) "Idling" means operation of the main propulsion
27 engine of a motor vehicle while the vehicle is stationary.

28 (i) "Implement of husbandry" means the same as that
29 term is defined in section one, article one, chapter seventeen-
30 a of this code.

31 (j) "Motor home" means the same as that term is defined
32 in section one, article one, chapter seventeen-a of this code.

33 (k) "Motor vehicle" means the same as that term is
34 defined in section three, article one of this chapter.

35 (l) "School bus" means the same as that term is defined
36 in section seven, article one of this chapter.

37 (m) "School grounds" means the same as that term is
38 defined in section fifty-five, article one of this chapter.

39 (n) "Stationary idle reduction technology" means
40 equipment that transforms power from the electric grid for
41 the purpose of delivering usable electric power, heat or air

conditioning to a motor vehicle for the purpose of reducing main engine idling.

§17C-13A-2. Restrictions on idling.

No driver or owner of a diesel-powered motor vehicle with a gross vehicle weight of ten thousand one pounds or more engaged in commerce may cause, and no owner or operator of the location where the vehicle loads, unloads or parks, may allow the engine of the vehicle to idle for more than fifteen minutes in any continuous sixty-minute period, except as provided under section three of this article.

§17C-13A-3. Exceptions.

(a) The idling restrictions set forth in section two of this article do not apply to motor homes, commercial implements of husbandry, implements of husbandry, or farm tractors.

(b) The idling restrictions set forth in section two of this article do not apply to construction equipment that cannot be licensed for on-road driving or construction equipment that is not designed primarily for on-road driving, notwithstanding that such equipment may be operated or driven on-road from time to time and in the course or performing its primary functions: *Provided*, That idling is necessary to power work-related mechanical, safety or electrical operations related to construction operations other than propulsion.

(c) A diesel-powered motor vehicle with a gross weight of ten thousand one pounds or more may idle beyond the time allowed in subsection (a) for one or more of the following reasons:

(1) When a vehicle idles while forced to remain motionless because of on-highway traffic, an official traffic

control device or signal, or at the direction of a law-enforcement official.

(2) When a vehicle must idle to operate defrosters, heaters, air conditioners or cargo refrigeration equipment, or to install equipment, in order to prevent a safety or health emergency, and not for the purpose of a rest period, or as otherwise necessary to comply with manufacturers' operating requirements, specifications and warranties in accordance with federal or state motor carrier safety regulations or local requirements.

(3) When a police, fire, ambulance, public safety, military, utility service vehicle or other emergency or law-enforcement vehicle or any vehicle being used in an emergency or public safety capacity shall idle while in an emergency or training mode and not for the convenience of the driver.

(4) When the primary propulsion engine idles for maintenance, particulate matter trap regeneration, servicing or repair of the vehicle, or for vehicle diagnostic purposes, if idling is required for that activity.

(5) When a vehicle idles as part of a federal or state inspection to verify that all equipment is in good working order, if idling is required as part of the inspection.

(6) When idling of a primary propulsion engine is necessary to power work-related mechanical, safety or electrical operations other than propulsion. This exemption does not apply when idling is done for cabin comfort or to operate nonessential onboard equipment.

(7) When idling of a primary propulsion engine is necessary as part of a security inspection either entering or exiting a facility.

(8) When an armored vehicle must idle when a person remains inside the vehicle to guard contents or while the vehicle is being loaded or unloaded.

(9) When a vehicle must idle due to mechanical difficulties over which the driver has no control, if the vehicle owner submits the repair paperwork or product repair verifying that the mechanical problem has been fixed, by mail to the commission within thirty days of the repair.

(10) When a bus or school bus must idle to provide heating or air conditioning when nondriver passengers are onboard. For the purposes of this exemption, the bus or school bus may idle for no more than a total of fifteen minutes in a continuous sixty-minute period, except when idling is necessary to maintain a safe temperature for bus passengers.

(11) An occupied vehicle with a sleeper-berth compartment that idles for purposes of air conditioning or heating during a rest or sleep period and the outside temperature at the location of the vehicle is less than forty degrees or greater than seventy-five degrees Fahrenheit at any time during the rest or sleep period. This applies to a motor vehicle subject to this article parked in any place that the vehicle is legally permitted to park, including, but not limited to, a fleet trucking terminal, commercial truck stop or designed rest area. This exemption expires May 1, 2012. This exemption does not apply if the vehicle is parked at a location equipped with stationary idle reduction technology that is available for use at the start of the rest period.

(12) When idling is necessary for sampling, weighing, active loading or active unloading or for an attended motor vehicle waiting for sampling, weighing, loading or unloading. For the purposes of this exemption, the vehicle may idle for up to a total of fifteen minutes in any continuous sixty-minute period.

(13) When idling by a school bus off school grounds during queuing for the sequential discharge or pickup of students is necessary because the physical configuration of a school or the school's surrounding streets does not allow for stopping.

(14) When idling is necessary for maintaining safe operating conditions while waiting for a police escort when transporting a load that requires the issuance of a permit in accordance with section eleven, article seventeen of this chapter.

(15) When actively engaged in solid waste collection or the collection of source-separated recyclable materials. This exemption does not apply when a vehicle is not actively engaged in solid waste collection or the collection of source-separated recyclable materials.

(16) When a diesel-powered motor vehicle exhibits a label issued by the California Air Resources Board under 13 CCR §1956.8(a)(6)(C) (relating to exhaust emissions standards and test procedures - 1985 and subsequent model heavy-duty engines and vehicles) showing that the vehicle's engine meets the optional Nox idling emission standard.

(17) When a diesel-powered motor vehicle is powered by clean diesel technology or bio-diesel fuels.

§17C-13A-4. Increase of weight limit.

The maximum gross weight limit and axle weight limit for any motor vehicle equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided under 23 U.S.C. §127(a)(12), as that section exists on the effective date of this article. The additional amount of weight allowed by this section may not be construed to be in addition to the tolerance authorized under section eleven-a, article seventeen of this chapter.

§17C-13A-5. Penalties.

The driver or owner of a diesel-powered motor vehicle with a gross weight of ten thousand one pounds or more engaged in commerce or the owner or operator of a location where such vehicles load, unload or park that violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, pay a fine of not less than $150 and not more than $300 and court costs.

§17C-13A-6. Notification.

If the driver of a diesel-powered motor vehicle subject to this article is convicted of a misdemeanor offense pursuant to this article is not the owner of the vehicle, the commission shall, under procedures established by the commission, notify the vehicle owner that the driver has been convicted.

§17C-13A-7. Enforcement.

Enforcement of the article is limited to: (1) Any member of the division of public safety of this state; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; and (4) any officers the commission may designate to enforce the provisions of this article. The prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require to enforce the provisions of this article.

§17C-13A-8. Permanent idling restriction signs.

An owner or operator of a location where vehicles subject to this article load or unload, or a location that provides fifteen or more parking spaces for vehicles subject to this article shall erect and maintain a permanent sign to inform

5 drivers that idling is restricted in this state pursuant to the
6 provisions of section three, article thirteen-a, chapter
7 seventeen-c of this code.

§17C-13A-9. Preemption.

1 (a) The provisions of this article preempt and supersede
2 a local ordinance or rule concerning the subject matter of this
3 article.

4 (b) This article does not prevent the Department of
5 Environmental Protection as set forth in chapter twenty-two
6 of this code from regulating motor vehicle emissions
7 pursuant to the provisions of section fifteen, article five,
8 chapter twenty-two of this code and any legislative rules
9 promulgated pursuant to that section.

CHAPTER 138

(Com. Sub. for H. B. 4034 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-16c, relating to authorizing any municipality to enact by ordinance a vacant building registration program; authorizing the assessment and collection of registration fees; authorizing exemptions of certain vacant properties; authorizing establishing a lien and assessment of civil penalties; authorizing an ordinance on notice to out of state owners; requiring certain procedures for

administration and enforcement and appeal; and providing for a special account and specifying uses of moneys received from fees assessed.

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 §8-12-16c, 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.

§8-12-16c. Registration of vacant buildings; registration fees; procedures for administration and enforcement.

1 (a) The governing body of a municipality shall have
2 plenary power and authority to establish by ordinance a
3 vacant building registration program. For purposes of this
4 section, the term "vacant building" means a building or other
5 structure that is unoccupied, or unsecured and occupied by
6 one or more unauthorized persons for an amount of time as
7 determined by the ordinance: *Provided*, That a new building
8 under construction or a building that by definition is
9 exempted by ordinance of the municipality, is not deemed a
10 vacant building: *Provided, however,* That the governing body
11 of a municipality, shall on a case by case basis, upon request
12 by the property owner, exempt a vacant building from
13 registration upon a finding for good cause shown that the
14 person will be unable to occupy the building for a
15 determinant period of time.

16 (b) An owner of real property subject to registration may
17 be charged a fee or fees as provided by ordinance. The

ordinance shall provide administrative procedures for the administration and enforcement of registration and payment and collection of registration fees.

(c) The ordinance may require that when the owner of the vacant building resides outside of the state that the owner provide the name and address of a person who resides within the state who is authorized to accept service of process and notices of fees due under this section on behalf of the owner and who is designated as a responsible, local party or agent for the purposes of notification in the event of an emergency affecting the public health, safety or welfare.

(d) The ordinance may authorize the municipality to institute a civil action against the property owner and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed, the municipality shall give notice to the property owner or owner's agent, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquent fees are paid by a date stated in the notice, which must be no less than thirty days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. The ordinance may provide for alternative means of service when service cannot be obtained by certified mail.

(e) The ordinance shall permit a property owner to challenge any determination made pursuant to the ordinance. The administrative procedures adopted pursuant to the ordinance shall include the right to appeal to the circuit court of the county in which the property is located.

(f) The governing body of a municipality shall deposit the fee into a separate account, which shall be used to:

(1) Improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;

(2) Monitor and administer this section; and

(3) Repair, close or demolish a vacant structure as authorized by section sixteen, article twelve, chapter eight.

CHAPTER 139

(Com. Sub. for H. B. 2663 - By Delegate Shook)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §8-14-5a of the Code of West Virginia, 1931, as amended, relating to expanding the power of municipal parking authority officers to ticket for municipal parking violations.

Be it enacted by the Legislature of West Virginia:

That §8-14-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; ETC.

§8-14-5a. Parking enforcement officers.

(a) A municipality or parking authority created by a municipality may employ parking enforcement officers,

3 whose sole duties are to patrol and to enforce municipal
4 parking ordinances upon or within designated municipal
5 parking areas and upon municipal streets. Parking
6 enforcement officers may sign complaints and issue citations.

7 (b) Parking enforcement officers shall:

8 (1) Be in uniform;

9 (2) Display a badge or other sign of authority; and

10 (3) Serve at the will and pleasure of their employer.

11 (c) The governing body of the municipality may require the
12 parking enforcement officers to give a surety bond, payable to
13 the municipality. The governing body shall set the amount of
14 the bond conditioned for the faithful performance of their duties.
15 Nothing in this section may be construed to mean that parking
16 enforcement officers come within the civil service provisions of
17 this article or the policemen's pension and relief fund provisions
18 of article twenty-two of this chapter.

CHAPTER 140

(S. B. 519 - By Senators Foster, Deem, Edgell, Hall and McCabe)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §8-22A-28 of the Code of West Virginia, 1931, as amended, relating to extending Social Security benefits to members of the West Virginia Municipal Police Officers and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

That §8-22A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.

1 (a) Subject to section sixteen, article twenty-two of this
2 chapter, any municipality or municipal subdivision
3 employing municipal police officers or firefighters may by a
4 majority of the members of its governing body eligible to
5 vote, elect to become a participating public employer and
6 thereby include its police officers and firefighters in the
7 membership of the plan. The clerk or secretary of each
8 municipality or municipal subdivision electing to become a
9 participating public employer shall certify the determination
10 of the municipality or municipal subdivision by corporate
11 resolution to the Consolidated Public Retirement Board
12 within ten days from and after the vote of the governing
13 body. Separate resolutions are required for municipal police
14 officers and municipal firefighters. Once a municipality or
15 municipal subdivision elects to participate in the plan, the
16 action is final and it may not, at a later date, elect to terminate
17 its participation in the plan.

18 (b) On or before October 1, 2011, the participating
19 employers shall jointly submit a plan to the State Auditor,
20 pursuant to section five, article seven, chapter five of this
21 code, to extend Social Security benefits to members of the
22 retirement system.

CHAPTER 141

**(Com. Sub. for S. B. 336 -
By Senator Bowman)**

[Amended and again passed March 20, 2010, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §20-2-5a and §20-2-7 of the Code of West Virginia, 1931, as amended, all relating to forfeiture and restitution by persons causing injury or death to game, protected species of animal or private game farm animals; adding additional replacement value for antlered deer based upon antler spread; increasing the forfeiture amount for illegally taken game fish or fish of a protected species; clarifying forfeiture procedures and costs; ordering restitution for private game farm animals; creating a new crime; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-5a and §20-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury or death of game or protected species of animal; additional replacement costs for antlered deer; forfeiture procedures and costs.
§20-2-7. Hunting, trapping or fishing on lands of another; damages and restitution.

§20-2-5a. Forfeiture by person causing injury or death of game or protected species of animal; additional

replacement costs for antlered deer; forfeiture procedures and costs.

(a) Any person who is convicted of violating a criminal law of this state that results in the injury or death of game, as defined in section two, article one of this chapter, or a protected species of animal, in addition to any other penalty to which he or she is subject, shall forfeit the cost of replacing the game or protected species of animal to the state as follows:

(1) For each game fish or each fish of a protected species taken illegally other than by pollution kill, $10 for each pound and any fraction thereof;

(2) For each bear or elk, $500;

(3) For each deer or raven, $200;

(4) For each wild turkey, hawk or owl, $100;

(5) For each beaver, otter or mink, $25;

(6) For each muskrat, raccoon, skunk or fox, $15;

(7) For each rabbit, squirrel, opossum, duck, quail, woodcock, grouse or pheasant, $10;

(8) For each wild boar, $200;

(9) For each bald eagle, $5,000;

(10) For each golden eagle, $5,000; and

(11) For any other game or protected species of animal, $100.

23 (b) In addition to the replacement value for deer in
24 subsection (a)(3), the following cost shall also be forfeited to
25 the state by any person who is convicted of violating any
26 criminal law of this state and the violation causes the injury
27 or death of antlered deer:

28 (1) For any deer in which the inside spread of the main
29 beams of the antlers measured at the widest point equals 14
30 inches or greater but less than 16 inches, $1,000;

31 (2) For any deer in which the inside spread of the main
32 beams of the antlers measured at the widest point equals 16
33 inches or greater but less than 18 inches, $1,500;

34 (3) For any deer in which the inside spread of the main
35 beams of the antlers measured at the widest point equals 18
36 inches or greater but less than 20 inches, $2,000; and

37 (4) For any deer in which the inside spread of the main
38 beams of the antlers measured at the widest point equals 20
39 inches or greater, $2,500.

40 (5) Any person convicted of a second or subsequent
41 violation of any criminal law of this state which violation
42 causes the injury or death of antlered deer is subject to double
43 the authorized range of cost to be forfeited.

44 (c) Upon conviction, the court shall order the person to
45 forfeit to the state the amount set forth in this section for the
46 injury or death of the game or protected species of animal.
47 If two or more defendants are convicted for the same
48 violation causing the injury or death of game or protected
49 species of animal, the forfeiture shall be paid by each person
50 in an equal amount. The forfeiture shall be paid by the
51 person so convicted within the time prescribed by the court
52 not to exceed sixty days. In each instance, the court shall pay
53 the forfeiture to the Division of Natural Resources to be

deposited into the License Fund- Wildlife Resources (3200) and used only for the replacement, habitat management or enforcement programs for injured or killed game or protected species of animal.

§20-2-7. Hunting, trapping or fishing on lands of another; damages and restitution.

(a) It is unlawful for any person to shoot, hunt, fish or trap upon the fenced, enclosed or posted lands of another person; or to peel trees or timber, build fires or do any other act in connection with shooting, hunting, fishing or trapping on such lands without written permission in his or her possession from the owner, tenant or agent of the owner.

(b) Any person who hunts, traps or fishes on land without the permission of the owner, tenant or agent of the owner is guilty of a misdemeanor and liable to the owner or person suffering damage for all costs and damages for: (1) Killing or injuring any domestic animal, fowl, or private game farm animal; (2) cutting, destroying or damaging any bars, gates or fence or any part of the property; or (3) leaving open any bars or gates resulting in damage to the property.

(c) Restitution of the value of the property or animals injured, damaged or destroyed shall be required upon conviction pursuant to sections four and five, article eleven-a, chapter sixty-one of this code. The restitution ordered for private game farm animals shall be equivalent to or greater than the replacement values for deer listed in section five-a in this article.

(d) The owner, tenant or agent of the owner may arrest a person violating this section and immediately take him or her before a magistrate. The owner, tenant or agent of the owner is vested with the powers and rights of a conservation officer for these purposes. The officers charged with the

enforcement of the provisions of this chapter shall enforce the provisions of this section if requested to do so by the owner, tenant or agent of the owner, but not otherwise.

(e) The provisions of subsections (b) and (d) of this section related to criminal penalties and being subject to arrest are inapplicable to a person whose dog, without the person's direction or encouragement, travels onto the fenced, enclosed or posted land of another in pursuit of an animal or wild bird: *Provided*, That the pursuit does not result in the taking of game from the fenced, enclosed or posted land and does not result in the killing of domestic animals or fowl or other damage to or on the fenced, enclosed or posted land.

CHAPTER 142

(S. B. 510 - By Senators Fanning and Unger)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §20-2-42 of the Code of West Virginia, 1931, as amended, relating to indexing Division of Natural Resources license and stamp fees; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §20-2-42 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42. Effective date and indexing of license and stamp fees.

1 The director may propose rules for legislative approval
2 in accordance with article three, chapter twenty-nine-a of this
3 code, changing any license or stamp fee set forth in this
4 article or in article two-b. All increases in license and stamp
5 fees in this article set forth in rule shall be computed in a
6 manner that indexes the increases to the Consumer Price
7 Index (All Items) published by the United States Department
8 of Labor rounded down to the nearest dollar: *Provided,* That
9 no fee increase resulting from increases in the Consumer
10 Price Index (All Items) may be made after January 1, 2021.

CHAPTER 143

(Com. Sub. for S. B. 567 - By Senators Laird, White and Kessler)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-16-1, §20-16-2, §20-16-3, §20-16-4, §20-16-5, §20-16-6, §20-16-7 and §20-16-8, all relating to responsibility and liability of nonprofit youth organizations, participants and providers in adventure or recreational activities; providing a short title, legislative purpose and definitions; providing the duties and liabilities of nonprofit youth organizations or providers; and providing duties and liabilities of participants.

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 §20-16-1, §20-16-2, §20-16-3, §20-16-4, §20-16-5, §20-16-6, §20-16-7 and §20-16-8, all to read as follows:

ARTICLE 16. NONPROFIT ADVENTURE AND RECREATIONAL ACTIVITY RESPONSIBILITY ACT.

§20-16-1. Short title.
§20-16-2. Legislative purpose.
§20-16-3. Definitions.
§20-16-4. Duties of a nonprofit youth organization or provider.
§20-16-5. Duties of participants.
§20-16-6. Liability of nonprofit youth organization or provider.
§20-16-7. Liability of participants.
§20-16-8. Applicability of article.

§20-16-1. Short title.

1 This article may be cited as the Nonprofit Adventure and
2 Recreational Activity Responsibility Act.

§20-16-2. Legislative purpose.

1 The Legislature finds that West Virginia is blessed by
2 geography and natural features that make it ideal for a host of
3 adventure and recreational activities attractive to nonprofit
4 youth organizations interested in training and inspiring
5 thousands of young people from other parts of the United
6 States and throughout the world. The location by these
7 organizations of facilities within the state will contribute
8 significantly to the economy of West Virginia, and enhance
9 the state's reputation as a place to visit and transact business.
10 Because it is recognized that there are inherent risks in
11 various adventure and recreational activities which should be
12 understood by participants therein and which are essentially
13 impossible for the organizations and their providers to
14 eliminate, it is the purpose of this article to define those areas
15 of responsibility and those affirmative acts for which these

nonprofit organizations and their providers of adventure and recreational activities shall be liable for loss, damage or injury suffered by participants, and to further define those risks which the participants expressly assume and for which there can be no recovery.

§20-16-3. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Adventure or recreational activity" means any program or activity sponsored by a nonprofit youth organization and conducted by the organization or its provider that involves inherent risks, including, but not limited to:

(A) All-terrain vehicle activities and similar activities, including all activities within the ATV Responsibility Act in article fifteen of this chapter;

(B) Biking, mountain-biking and similar activities;

(C) Canopy activities, zip-lines and similar activities;

(D) Climbing and repelling and similar activities in improved and natural areas, including climbing walls;

(E) Equestrian activities and similar activities, including all activities within the Equestrian Activities Responsibility Act in article four of this chapter;

(F) Firearms training and similar activities;

(G) Hiking, backpacking, camping and similar activities;

(H) Paintball and similar activities;

(I) Rope initiatives, cope and confidence courses, challenge courses, slacklines, challenge courses and similar activities;

(J) Skating, including ice skating, rollerblading, and similar activities;

(K) Snow activities, including snowshoeing, snow skiing, sledding, snowmobiling, and similar activities, including all activities within the Skiing Responsibility Act in article three-a of this chapter;

(L) Spelunking, caving, and similar activities;

(M) Water sports, including swimming, diving, canoeing, kayaking, boating, sailing, scuba diving, water skiing, and similar activities, including all activities within the Whitewater Responsibility Act in article three-b of this chapter;

(N) Windsurfing and similar activities.

(2) "Employee" means an officer, agent, employee, servant, or volunteer, whether compensated or not, whether full time or not, who is authorized to act and is acting within the scope of his or her employment or duties with the nonprofit youth organization or provider.

(3) "Nonprofit youth organization" means any nonprofit organization, including any subsidiary, affiliate or other related entity within its corporate or other business structure, that has been chartered by the United States Congress to train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(4) "Participant" means any person engaging in an adventure or recreational activity.

(5) "Provider" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, and any other legal entity which engages, with or without compensation, in organizing, promoting, presenting or providing or assisting in providing an adventure or recreational activity sponsored by a nonprofit youth organization, including one that allows the nonprofit youth organization the use of its land for the adventure or recreational activity.

§20-16-4. Duties of a nonprofit youth organization or provider.

Every nonprofit youth organization or provider shall:

(1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the adventure or recreational activity;

(2) Make known to any participant any dangerous traits or characteristics or any physical impairments or conditions related to a particular adventure or recreational activity, of which the nonprofit youth organization or provider knows or through the exercise of due diligence could know;

(3) Make known to any participant any dangerous condition as to land or facilities under the lawful possession and control of the nonprofit youth organization or provider, of which the nonprofit youth organization or provider knows or through the exercise of due diligence could know, by advising the participant in writing or by conspicuously posting warning signs upon the premises;

(4) Assure that each participant has or is provided all equipment reasonably necessary for all activities covered by this article and, in providing equipment to a participant, make reasonable and prudent efforts to inspect such equipment to assure that it is in proper working condition and safe for use in the adventure or recreational activity;

(5) Prepare and present to each participant or prospective participant, for his or her inspection and signature, a statement which clearly and concisely explains the liability limitations, restrictions and responsibilities set forth in this article: *Provided,* That said statement shall not contain nor have the effect of a waiver of a nonprofit youth organization or provider's duties set forth in this section;

(6) Make reasonable efforts to provide supervision of participants while engaged in activities under this article.

§20-16-5. Duties of participants.

It is recognized that the adventure and recreational activities described in this article are hazardous to participants, regardless of all feasible safety measures which can be taken.

Each participant in an adventure or recreational activity expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in an activity. Each participant shall have the sole individual responsibility for knowing the range of his or her own ability to participate in a particular adventure or recreational activity, and it shall be the duty of each participant to act within the limits of the participant's own ability, to heed all posted warnings, to act in accordance with the instructions of any employee of the non-profit youth organization or provider, to perform an adventure or recreational activity only in an area or facility designated by

17 the nonprofit youth organization or provider and to refrain
18 from acting in a manner which may cause or contribute to the
19 injury of anyone. There is a rebuttable presumption that any
20 participant under the age of fourteen is incapable of
21 comparative negligence or assumption of the risk. There is an
22 irrebuttable presumption that any participant under the age of
23 seven is incapable of comparative negligence or assumption
24 of the risk. Any participant over the age of fourteen will be
25 subject to the common law presumptions as to their acts and
26 or omissions.

27 A participant involved in an accident shall not depart
28 from the area or facility where the adventure or recreational
29 activity took place without leaving personal identification,
30 including name and address, or without notifying the proper
31 authorities, or without obtaining assistance when that person
32 knows or reasonably should know that any other person
33 involved in the accident is in need of medical or other
34 assistance.

§20-16-6. Liability of nonprofit youth organization or provider.

1 (a) A nonprofit youth organization or provider shall be
2 liable for injury, loss or damage caused by failure to follow
3 the duties set forth in section four of this article where the
4 violation of duty is causally related to the injury, loss or
5 damage suffered. A nonprofit youth organization or provider
6 shall not be liable for any injury, loss or damage caused by
7 the negligence of any person who is not an agent or employee
8 of the nonprofit youth organization or provider.

9 (b) A nonprofit youth organization or provider shall be
10 liable for acts or omissions which constitute gross negligence
11 or willful and wanton conduct which is the proximate cause
12 of injury to a participant.

(c) A nonprofit youth organization or provider shall be liable for an intentional injury which he or she inflicts upon a participant.

(d) Every nonprofit youth organization and any provider for such non-profit youth organization shall carry public liability insurance in limits of no less than $500,000 per person, $1,000,000 per occurrence and $50,000 for property damage with coverage extending to any employee of the non-profit youth organization or provider in the course of their duties as an employee or volunteer. The failure to have in effect the insurance required by this section shall prevent the non-profit youth organization or provider from relying on the provisions of this article in any civil action brought by a participant.

§20-16-7. Liability of participants.

Any participant shall be liable for injury, loss or damage resulting from violations of the duties set forth in section five of this article: *Provided*, That none of the provisions in this article shall modify or eliminate any other statutory or common law provisions which specifically relate to or concern liability of minors or the capacity of minors to legally enter into contracts.

§20-16-8. Applicability of article.

The provisions of this article are in addition to provisions of articles three-a, three-b, four and fifteen of this chapter, and are to be construed in pari materia.

CHAPTER 144

(Com. Sub. for H. B. 4299 - By Delegates White, Campbell, Michael and Ross)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §5-16-22 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Public Employees Insurance Agency; providing that retired employees who retire on or after July 1, 2010, who have participated in the plan as active employees for less than five years and who were employed by an employer that is not participating in the Public Employees Insurance Agency insurance program are responsible for the entire premium cost for coverage; providing an exception.

Be it enacted by the Legislature of West Virginia:

That §5-16-22 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.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article are not mandatory upon any
2 employee or employer who is not an employee of or is not the
3 State of West Virginia, its boards, agencies, commissions,

4 departments, institutions or spending units or a county board
5 of education, and nothing contained in this article may be
6 construed so as to compel any employee or employer to enroll
7 in or subscribe to any insurance plan authorized by the
8 provisions of this article.

9 Those employees enrolled in the insurance program
10 authorized under the provisions of article two-b, chapter
11 twenty-one-a of this code may not be required to enroll in or
12 subscribe to an insurance plan or plans authorized by the
13 provisions of this article, and the employees of any department
14 which has an existing insurance program for its employees to
15 which the government of the United States contributes any part
16 or all of the premium or cost of the premium may be exempted
17 from the provisions of this article. Any employee or employer
18 exempted under the provisions of this paragraph may enroll in
19 any insurance program authorized by the provisions of this
20 article at any time, to the same extent as any other qualified
21 employee or employer, but employee or employer may not
22 remain enrolled in both programs. The provisions of articles
23 fourteen, fifteen and sixteen, chapter thirty-three of this code,
24 relating to group life insurance, accident and sickness
25 insurance, and group accident and sickness insurance, are not
26 applicable to the provisions of this article whenever the
27 provisions of articles fourteen, fifteen and sixteen, chapter
28 thirty-three of this code are in conflict with or contrary to any
29 provision set forth in this article or to any plan or plans
30 established by the Public Employees Insurance Agency.

31 Employers, other than the State of West Virginia, its
32 boards, agencies, commissions, departments, institutions,
33 spending units or a county board of education are exempt from
34 participating in the insurance program provided for by the
35 provisions of this article unless participation by the employer
36 has been approved by a majority vote of the employer's
37 governing body. It is the duty of the clerk or secretary of the

38 governing body of an employer who by majority vote becomes
39 a participant in the insurance program to notify the director not
40 later than ten days after the vote.

41 Any employer, whether the employer participates in the
42 Public Employees Insurance Agency insurance program as a
43 group or not, which has retired employees, their dependents or
44 surviving dependents of deceased retired employees who
45 participate in the Public Employees Insurance Agency insurance
46 program as authorized by this article, shall pay to the agency the
47 same contribution toward the cost of coverage for its retired
48 employees, their dependents or surviving dependents of
49 deceased retired employees as the State of West Virginia, its
50 boards, agencies, commissions, departments, institutions,
51 spending units or a county board of education pay for their
52 retired employees, their dependents and surviving dependents of
53 deceased retired employees, as determined by the finance board:
54 *Provided,* That after June 30, 1996, an employer not mandated
55 to participate in the plan is only required to pay a contribution
56 toward the cost of coverage for its retired employees, their
57 dependents or the surviving dependents of deceased retired
58 employees who elect coverage when the retired employee
59 participated in the plan as an active employee of the employer
60 for at least five years: *Provided, however,* That those retired
61 employees of an employer not participating in the plan who
62 retire on or after July 1, 2010, who have participated in the plan
63 as active employees of the employer for less than five years are
64 responsible for the entire premium cost for coverage and the
65 Public Employees Insurance Agency shall bill for and collect the
66 entire premium from the retired employees, unless the employer
67 elects to pay the employer share of the premium. Each
68 employer is hereby authorized and required to budget for and
69 make such payments as are required by this section.

CHAPTER 145

(S. B. 464 - By Senators Bowman, McCabe, Stollings, Unger, Plymale and Chafin)

[Passed March 9, 2010; in effect July 1, 2010.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §29-6-5 of the Code of West Virginia, 1931, as amended, relating to clarifying provisions relating to functions of the Division of Personnel.

Be it enacted by the Legislature of West Virginia:

That §29-6-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5. Division of Personnel continued; functions.

(a) The Division of Personnel is continued within the Department of Administration.

(b) The Division of Personnel shall perform the following functions:

(1) Evaluating applicants for appointment or promotion to positions in the classified service;

(2) Establishing and applying a system of classification for positions in the classified and classified-exempt service;

9 (3) Establishing and applying a system of compensation
10 for positions in the classified service;

11 (4) Establishing and maintaining records of employment
12 for classified employees;

13 (5) Advising appointing authorities and supervisory
14 personnel regarding disciplinary matters, the provisions of
15 this article, rules implementing the provisions of this article,
16 and laws and rules affecting human resource management;

17 (6) Providing training in human resource management
18 and the operation of the state personnel system;

19 (7) Assuring compliance with this article and rules
20 implementing the provisions of this article; and

21 (8) Other functions necessary to the establishment of a
22 system of personnel administration as provided in this article.

CHAPTER 146

(Com. Sub. for S. B. 89 -
By Senator Kessler)

[Passed March 4, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §8-14-6 and §8-14-17 of the Code of West Virginia, 1931, as amended, all relating to paid police departments; and establishing that chiefs or deputy chiefs of police are to return to their previously held position within the paid police department following expiration of term as chief or deputy chief.

Be it enacted by the Legislature of West Virginia:

That §8-14-6 and §8-14-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING; POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-6. Qualifications for appointment or promotion to positions in certain paid police departments to be ascertained by examination; provisions exclusive as to appointments, etc.; definitions.
§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

§8-14-6. Qualifications for appointment or promotion to positions in certain paid police departments to be ascertained by examination; provisions exclusive as to appointments, etc.; definitions.

(a) All appointments and promotions to all positions in all paid police departments of Class I and Class II cities shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided.

(b) No individual, except the chief or deputy chiefs of police, if the position of deputy chief of police has been previously created by the city council of that Class I or Class

9 II city, may be appointed, promoted, reinstated, removed,
10 discharged, suspended or reduced in rank or pay as a paid
11 member of a paid police department, regardless of rank or
12 position, of any Class I or Class II city in any manner or by
13 any means other than those prescribed in the following
14 sections of this article: *Provided,* That an individual
15 appointed chief or deputy chief of police who held a position
16 as a member of a paid police department in that police
17 department before the appointment as chief or deputy chief
18 of police shall be reinstated to the officer's previous rank
19 following his or her term as chief or deputy chief of police.

20 (c) The term "member of a paid police department",
21 whenever used in the following sections of this article, means
22 an individual employed in a paid police department who is
23 clothed with the police power of the state in being authorized
24 to carry deadly weapons, make arrests, enforce traffic and
25 other municipal ordinances, issue summons for violations of
26 traffic and other municipal ordinances, and perform other
27 duties which are within the scope of active, general law
28 enforcement.

29 (d) The term "appointing officer", as used in the
30 following sections of this article, means the Class I or Class
31 II city officer in whom the power of appointment of members
32 of a paid police department is vested by charter provision or
33 ordinance of the city.

§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

1 (a) Vacancies in positions in a paid police department of
2 a Class I or Class II city shall be filled, so far as practicable,
3 by promotions from among individuals holding positions in
4 the next lower grade in the department.

(b) Promotions shall be based upon experience and by written competitive examinations to be provided by the Policemen's Civil Service Commission: *Provided,* That except for the chief or deputy chiefs of police, if the position of deputy chief of police has been previously created by the city council of that Class I or Class II city, no individual is eligible for promotion from the lower grade to the next higher grade until the individual has completed at least two years of continuous service in the next lower grade in the department immediately prior to the examination: *Provided, however,* That notwithstanding the provisions of section six of this article, any member of a paid police department of a Class I or Class II city now occupying the office of chief or deputy chief of police of that paid police department, or hereafter appointed to the office of chief or deputy chief of police, except as hereinafter provided in this section, is entitled to all of the rights and benefits of the civil service provisions of this article, except that he or she may be removed from the office of chief or deputy chief of police without cause, and the time spent by the member in the office of chief or deputy chief of police shall be added to the time served by the member during the entire time he or she was a member of that paid police department prior to his or her appointment as chief or deputy chief of police, and shall in all cases of removal, except for removal for good cause, retain the regular rank within that paid police department which he or she held at the time of his or her appointment to the office of chief or deputy chief of police or which he or she has attained during his or her term of service as chief or deputy chief of police.

(c) The provisions of this section apply and inure to the benefit of all individuals who have ever been subject to the provisions of this article. The commission may determine in each instance whether an increase in salary constitutes a promotion.

CHAPTER 147

(Com. Sub. for S. B. 81 - By Senators Jenkins, Foster and Stollings)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8, all relating to creating the West Virginia Official Prescription Program Act; requiring prescriptions to be written on an official tamper-proof prescription pad; requiring the promulgation of legislative rules; setting forth the requirements to be included in the rules; setting for exclusions from the requirements of the West Virginia Official Prescription Program Act; reporting requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8, all to read as follows:

ARTICLE 5W. WEST VIRGINIA OFFICIAL PRESCRIPTION PROGRAM ACT.

§16-5W-1. Short title.
§16-5W-2. Legislative findings.
§16-5W-3. Definitions.

§16-5W-4. Establishment of West Virginia Official Prescription Program.
§16-5W-5. Legislative rules.
§16-5W-6. Exclusions.
§16-5W-7. Reporting requirements.
§16-5W-8. Limitation of additional record keeping and liability.

§16-5W-1. Short title.

1 This act shall be known and may be cited as the "West
2 Virginia Official Prescription Program Act".

§16-5W-2. Legislative findings.

1 (a) Use of fraudulently obtained prescriptions to illegally
2 obtain prescription drugs is an epidemic. It has few equals for
3 sheer size, speed of growth, resistance to deterrence, harm to
4 people from so many strata of society, and large costs to
5 insurers. Overdoses, deaths and injuries continue growing at
6 an alarming rate. More than twenty million Americans-
7 nearly seven percent of the population-were estimated to
8 abuse prescription drugs in 2007, based on the National
9 Survey on Drug Use and Health.

10 (b) Prescription drug diversion drains health insurers
11 nationally of up to $72.5 billion a year, including up to $24.9
12 billion annually for private insurers. Estimated losses include
13 insurance schemes, plus the larger hidden costs of treating
14 patients who develop serious medical problems from abusing
15 the addictive narcotics they obtained through the swindles.

16 (c) Federal law now requires tamper resistant
17 prescriptions for all Medicaid prescriptions, and various
18 states have taken on the task of implementing document
19 security programs as part of their efforts to reduce
20 substantially prescription drug fraud.

21 (d) The State of New York documented Medicaid savings
22 of $140 million directly tied to its secure issuance
23 prescription program during the first year after
24 implementation. It is estimated that the savings resulting

25 from the reduction in prescription drug fraud will more than
26 pay for the cost of implementing an official secure state
27 prescription program in West Virginia within a reasonable
28 period of time following initial implementation.

§16-5W-3. Definitions.

1 As used in this article:

2 (1) "Board" means the Board of Pharmacy established in
3 article five, chapter thirty of this code.

4 (2) "Dispenser" means a person authorized in this state to
5 distribute to the ultimate user a substance monitored by the
6 prescription monitoring program, but does not include:

7 (A) A licensed hospital pharmacy that distributes such
8 substances for the purposes of inpatient hospital care or the
9 dispensing of prescriptions for controlled substances at the
10 time of discharge from such a facility; or

11 (B) A licensed health care provider who administers such
12 a substance at the direction of a licensed physician.

13 (3) "Prescriber" means an individual currently licensed
14 and authorized by this state to prescribe and administer
15 prescription drugs in the course of their professional practice.
16 These include, but are not limited to, allopathic and
17 osteopathic physicians, physician assistance, optometrists,
18 podiatrists and nurse practitioners as allowed by law.

19 (4) "West Virginia Official Prescription Program" means
20 the program established under section four of this article.

21 (5) "Program Vendor" means the private contractor or
22 contractors selected to manage the production and delivery
23 of official state prescription paper.

24 (6) "West Virginia Official Prescription" means
25 prescription paper, which has been authorized by the state for
26 use, and meets the following criteria:

27 (A) Prevention of unauthorized copying;

28 (B) Prevention of erasure or modification;

29 (C) An ability to prevent counterfeit prescription pads;
30 and

31 (D) Capable of supporting automated validation through
32 pharmacy claims processing systems using the official state
33 prescription control number.

§16-5W-4. Establishment of West Virginia Official Prescription Program.

1 (a) The board shall establish and maintain an official
2 prescription program in the state. The board may contract
3 with a program vendor or vendors to establish and maintain
4 the official state prescription program.

5 (b) The official West Virginia prescription paper shall be
6 authorized by the board through a program vendor or vendors
7 in batch quantities, which paper may be serially numbered
8 and unable to be altered, copied, or counterfeited. Blank
9 prescription paper shall not be transferable. The official
10 prescription paper shall be provided to appropriate
11 practitioners and facilities at a fee established by legislative
12 rule.

13 (c) Prescription paper may be issued to specific
14 practitioners marked with a unique number and, if so, shall
15 only be used by that practitioner. The board shall establish
16 security requirements concerning the procurement of the
17 official prescription paper which both the board and the
18 contracted program vendor shall use.

(d) A pharmacist may not fill a written prescription from a West Virginia practitioner unless issued upon an official state issued prescription form.

§16-5W-5. Legislative rules.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the requirements of this article.

The legislative rules shall include, at a minimum:

(1) That on July 1, 2011, every prescription written in West Virginia by a practitioner shall be written on official West Virginia tamper-resistant prescription paper.

(2) Contracting requirements for contracting with a program vendor or vendors including auditing requirements for printing facilities and standard prescription pad formatting requirements.

(3) Standard format for prescription paper and the development of identifying markers on prescription paper. These markers shall be on the front and back of the prescription paper to be used by practitioners throughout the state.

(4) A means of reporting unauthorized use, theft or destruction of authorized state prescription paper.

(5) Fees for the distribution of standard format prescription paper to practitioners and facilities.

§16-5W-6. Exclusions.

The provisions of this article do not apply to:

(a) Oral prescription practices;

3 (b) Electronic prescription practices;

4 (c) Out-of-state prescription practices; or

5 (d) Prescriptions generated within a licensed medical
6 facility that results in the internal dispensing of prescription
7 drugs to any patient receiving treatment in that facility where
8 the patient is never in possession of the prescription.

§16-5W-7. Reporting requirements.

1 Practitioners shall immediately notify the board as
2 prescribed by legislative rule of the loss, destruction, theft or
3 unauthorized use of any official state prescription paper
4 issued to them as well as the failure to receive official state
5 prescription paper within a reasonable time after ordering
6 them from the board. Upon receipt of notification, the board
7 shall conduct a thorough investigation and take any necessary
8 and appropriate action.

§16-5W-8. Limitation of additional record keeping and liability.

1 (a) Official state prescription paper may include unique
2 serial numbers for tracking purposes and to decrease
3 potential fraud. Inclusion of a serial number does not:

4 (1) Place additional tracking or reporting responsibilities
5 on a practitioner or pharmacist with the exception of those
6 listed in section six of this act; or

7 (2) Affect the liability or responsibility of a practitioner
8 or a pharmacist.

9 (b) Use of official West Virginia prescription paper shall
10 meet all requirements issued by the Center for Medicare and
11 Medicaid Services for the use of tamper-resistant security
12 features.

CHAPTER 148

(Com. Sub. for H. B. 4450 - By Delegates Fragale, Boggs, Hartman, Hatfield, Morgan, Stephens and T. Walker)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT to repeal §30-13A-26, §30-13A-27, §30-13A-28, §30-13A-29, §30-13A-30, §30-13A-31, §30-13A-32, §30-13A-33, §30-13A-34, §30-13A-35, §30-13A-36 and §30-13A-37 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §1-1-5; to amend said code by adding thereto a new section, designated §7-2-8; to amend and reenact §30-13A-1, §30-13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9, §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-16, §30-13A-17, §30-13A-18, §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-13A-23, §30-13A-24 and §30-13A-25 of said code; and to amend and reenact §39-1-2a of said code, all relating to surveys; moving the West Virginia coordinate systems to another chapter of the code; requiring a license to practice surveying; requiring a certificate of authorization for a firm to practice surveying; updating definitions; continuing the Board of Professional Surveyors; changing the board composition; clarifying the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; clarifying the education and experience requirements for licensure; licensing requirements; establishing scope of practice; providing exceptions from licensure; clarifying surveyor intern requirements; licensing requirements for persons licensed in

another state; renewal requirements; clarifying inactive license requirements; clarifying procedures for delinquent and expired licenses; clarifying retired license requirements; clarifying procedures for when a person fails an examination; requiring display of a license, endorsement and certification of authorization; clarifying certification of authorization requirements; clarifying requirements for a surveyor-in-charge; providing a due process procedure, grounds for disciplinary action, hearing procedures, judicial review appeals of decisions and cause for initiation of criminal proceedings; clarifying criminal penalties; and updating requirements to record a survey.

Be it enacted by the Legislature of West Virginia:

That §30-13A-26, §30-13A-27, §30-13A-28, §30-13A-29, §30-13A-30, §30-13A-31, §30-13A-32, §30-13A-33, §30-13A-34, §30-13A-35, §30-13A-36 and §30-13A-37 of the Code of West Virginia, 1931, as amended, be repealed; to amend said code by adding thereto a new section, designated §1-1-5; to amend said code by adding thereto a new section, designated §7-2-8; that §30-13A-1, §30-13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9, §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-16, §30-13A-17, §30-13A-18, §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-13A-23, §30-13A-24 and §30-13A-25 of said code be amended and reenacted; and that §39-1-2a of said code be amended and reenacted, all to read as follows:

Chapter

1. The State and Its Subdivisions.
7. County Commissions and Officers.
30. Professions and Occupations.
39. Records and Papers.

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 1. LIMITS AND JURISDICTION.

§1-1-5. West Virginia coordinate systems; definition; plane coordinates, limitations of use; conversion factor for meters to feet.

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

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

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

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

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

As established for use in the South Zone, the West Virginia Coordinate System of 1927 or the West Virginia 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 Service/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.

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

(g) (1) For purposes of more precisely defining the West Virginia Coordinate System of 1927, the following definition by the United States Coast and Geodetic Survey (now National Ocean Service/National Geodetic Survey) is adopted:

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

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

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

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

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

(h) No coordinates based on the West Virginia Coordinate System, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public records or deed records unless the point is based on a public or private monumented horizontal control station established in conformity with the standards of accuracy and specifications for first order or better geodetic surveying as prepared and published by the Federal Geodetic Control Committee of the United States Department of Commerce. Standards and specifications of the Federal Geodetic Control Committee or its successor in force on the date of the survey apply. The publishing of the existing control stations, or the acceptance with intent to publish the newly established control stations, by the National Ocean Service/National Geodetic Survey is evidence of adherence to the Federal Geodetic Control Committee specifications. The limitations

specified in this section may be modified by a duly authorized state agency to meet local conditions.

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

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

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

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

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

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

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 2. COUNTY AND DISTRICT BOUNDARIES; CHANGE OF COUNTY SEAT AND NAMES OF UNINCORPORATED TOWNS AND OF DISTRICTS; COUNTY SURVEYOR.

§7-2-8. License required for county surveyor.

1 Each county surveyor of lands first elected or first
2 appointed after January 1, 2013, pursuant to section 1, article
3 IX of the West Virginia Constitution, shall be a surveyor
4 licensed pursuant to article thirteen-a, chapter thirty of this
5 code and such licensee shall be in good standing.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-1. Unlawful acts.
§30-13A-2. Applicable law.
§30-13A-3. Definitions.
§30-13A-4. Board of Professional Surveyors.
§30-13A-5. Powers and duties of the board.
§30-13A-6. Rule-making authority.
§30-13A-7. Fees; special revenue account; administrative fines.
§30-13A-8. Education, experience and examination requirements for a surveying license.
§30-13A-9. Surveying license requirements.
§30-13A-10. Scope of Practice.
§30-13A-11. Exemptions from licensing.
§30-13A-12. Surveyor intern requirements.
§30-13A-13. License from another state.
§30-13A-14. License, endorsement and certificate of authorization renewal requirements.
§30-13A-15. Inactive license requirements.
§30-13A-16. Delinquent and expired license requirements.
§30-13A-17. Retired license requirements.
§30-13A-18. Requirements for when a person fails an examination.
§30-13A-19. Display of license, endorsement and certificate of authorization.
§30-13A-20. Certificate of authorization requirements.
§30-13A-21. Surveyor-in-charge requirements.
§30-13A-22. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-13A-23. Procedures for hearing.
§30-13A-24. Judicial review.
§30-13A-25. Criminal proceedings; penalties.

§30-13A-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice surveying in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a surveyor, unless such person has been licensed under the provisions of this article.

(b) It is unlawful for any firm to practice or offer to practice surveying in this state without a certificate of authorization issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that it is a surveying firm, unless such firm has been issued a certificate of authorization under the provisions of this article.

§30-13A-2. Applicable law.

The practice of surveying and the West Virginia Board of Professional Surveyors are subject to the provisions of article one of this chapter, the provisions of this article and the board's rules.

§30-13A-3. Definitions.

As used in this article, the following words and terms have the following meanings:

(a) "Applicant" means a person making application for a license or a firm making application for a certificate of authorization, under the provisions of this article.

(b) "Board" means the West Virginia Board of Professional Surveyors.

(c) "Boundary survey" means a survey, in which property lines and corners of a parcel of land have been established by a survey and a description of survey has been written and a plat has been prepared for the property.

12 (d) "Cadastral survey" means a survey representing the
13 ownership, relative positions and dimensions of land, objects
14 and estates.

15 (e) "Certificate holder" means a firm holding a certificate
16 of authorization issued by the board.

17 (f) "Certificate of authorization" means a certificate
18 issued under the provisions of this article to a firm providing
19 surveying services.

20 (g) "Construction survey" means the laying of stakes for
21 a construction project.

22 (h) "Direct supervision" means the responsible licensee
23 is in direct control of all field and office surveying
24 operations. Direct control does not necessarily require the
25 actual physical presence of the responsible licensee at the site
26 of the survey, nor prohibit the responsible licensee from
27 maintaining simultaneous direct supervision of more than one
28 survey.

29 (i) "Endorsee" means a person holding an endorsement
30 to practice in a specialized field of surveying issued by the
31 board under the provisions of this article.

32 (j) "Endorsement" means an authorization, in addition to
33 a professional surveyor license, to practice in a specialized
34 field of surveying issued by the board.

35 (k) "Firm" means any nongovernmental business entity,
36 including an individual, association, partnership or
37 corporation, providing surveying services.

38 (l) "Geodetic control survey" means a survey involving the
39 precise measurement of points on the earth's surface which form
40 the framework or control for a large map or project.

(m) "Geographic information system (GIS)" means a system of hardware, software and procedures designed to support the capture and management of spatially referenced information.

(n) "Hydrographic survey" means a survey that measures and determines the topographic features of water bodies and the adjacent land areas, including the width, depth and course of water bodies and other relative features.

(o) "Inactive" means the status granted by the board to a licensee or endorsee.

(p) "Land information system (LIS)" means a system of hardware, software and procedures designed to support the capture and management of spatially referenced information.

(q) "License" means a surveying license issued under the provisions of this article.

(r) "Licensee" means a person holding a surveying license issued under the provisions of this article.

(s) "Metes and bounds" means a description where the land or the associated effects on the land have been measured by starting at a known point and describing, in sequence, the lines by direction and distance forming the boundaries of the land or a defined area relative to the physical land features, associated effects or structural improvements on the land.

(t) "Monument" means a permanent marker, either boundary or nonboundary, used to establish corners or mark boundary lines of a parcel of land or reference the geospatial relationship of other objects.

(u) "Mortgage/loan inspection survey" means a survey in which property lines and corners have not been established.

(v) "Oil or gas well survey" means a survey and plat of a proposed oil or gas well, including the location of the well, the surface or mineral tract on which the well is located, the physical features surrounding the well, all creeks or streams near the well and any other identifying characteristics of the land to specify the location of the well. An oil or gas well survey must be performed in accordance with other provisions of this code affecting oil and gas well surveys.

(w) "Partition survey" means a survey where the boundary lines of a newly created parcel of land are established and the new corners are monumented.

(x) "Photogrammetry" means the use of aerial photography, other imagery and surveying principles to prepare scaled maps or other survey products reflecting the contours, features and fixed works of the earth's surface.

(y) "Practice of surveying" means providing professional surveying services, including consulting, investigating, expert testimony, evaluating, planning, mapping and surveying.

(z) "Responsible charge" means direct control of surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying.

(aa) "Retracement survey" means a survey where the boundary lines and corners of a parcel of land are reestablished from an existing legal or deed description.

(bb) "Strip" means a description of an area by reference to an alignment, usually a right-of-way or an easement, stating the number of feet on each side of the alignment, the relative position of the alignment, a reference to the measurements and monuments where the alignment crosses

a parcel of land and the source of title for each parcel of land the alignment crosses.

(cc) "Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land.

(dd) "Surface mine survey" means a survey of the surface mine permit area, including the location of the surface mine, the surface or mineral tracts on which the surface mine is located, the physical features surrounding the surface mine, all creeks or streams near the surface mine and any other identifying characteristics of the land to specify the location of the surface mine permit area. A surface mine survey must be performed in accordance with other provisions of this code affecting surface mine surveys.

(ee) "Survey" or "land survey" means to measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements.

(ff) "Surveying" or "land surveying" means providing, or offering to provide, professional services using such sciences as mathematics, geodesy, and photogrammetry, and involving both:

(1) The making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, improvements on the earth, the space above, on or below the earth; and

(2) Providing, utilizing or developing the same into survey products such as graphics, data, maps, plans, reports, descriptions or projects. Professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling and interpreting gathered measurements and information related to any one or more of the following:

(A) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects thereon.

(B) Determining by performing geodetic surveys the size and shape of the earth or the position of any point on the earth.

(C) Determining the position for any survey control monument or reference point.

(D) Creating, preparing or modifying electronic, computerized or other data relative to the performance of the activities in the above-described paragraphs (A) through (C), inclusive, of this subdivision.

(E) Locating, relocating, establishing, reestablishing or retracing property lines or boundaries of any tract of land, road, right-of-way or easement.

(F) Making any survey for the division, subdivision, or consolidation of any tract or tracts of land.

(G) Locating or laying out alignments, positions or elevations for the construction of fixed works.

(H) Determining, by the use of principles of surveying, the position for any boundary or nonboundary survey monument or reference point, or establishing or replacing any such monument or reference point.

(I) Creating, preparing or modifying electronic or computerized or other data relative to the performance of the activities in the above-described paragraphs (E) through (H), inclusive, of this subdivision.

(3) Any person who engages in surveying, who by verbal claim, sign, advertisement, letterhead, card or in any other

way represents themselves to be a professional surveyor, or who implies through the use of some other title that they are able to perform, or who does perform, any surveying service or work or any other service designated by the practitioner which is recognized as surveying, is practicing, or offering to practice, surveying within the meaning and intent of this article.

(gg) "Surveyor", "professional surveyor" or "land surveyor" means a person licensed to practice surveying under the provisions of this article.

(hh) "Surveyor, retired", "professional surveyor, retired" or "land surveyor, retired" means a licensed surveyor no longer practicing surveying, who has chosen to retire and has been granted the honorific title of "Professional Surveyor, Retired".

(ii) "Surveyor-in-charge" means a licensee designated by a firm to oversee the surveying activities and practices of the firm.

(jj) "Surveyor intern" means a person who has passed an examination covering the fundamentals of land surveying.

(kk) "Underground survey" means a survey that includes the measurement of underground mine workings and surface features relevant to the underground mine, the placing of survey points (spads) for mining direction, the performance of horizontal and vertical control surveys to determine the contours of a mine, the horizontal and vertical location of mine features, and the preparation of maps, reports and documents, including mine progress maps and mine ventilation maps. An underground mine survey must be performed in accordance with other provisions of this code affecting underground mine surveys.

§30-13A-4. Board of Professional Surveyors.

1 (a) The "West Virginia Board of Professional Surveyors"
2 is continued. Any member of the board, except the endorsed
3 underground surveyor member, in office on July 1, 2010,
4 may continue to serve until his or her successor has been
5 appointed and qualified.

6 (b) Prior to July 1, 2010, the Governor, by and with the
7 advice and consent of the Senate, shall appoint one licensed
8 professional surveyor with at least ten years of experience in
9 land surveying to replace the endorsed underground surveyor.

10 (c) Commencing July 1, 2010, the board shall consist of
11 the following five members with staggered terms:

12 (1) Three licensed professional surveyors with at least ten
13 years of experience in land surveying;

14 (2) One person who has a license in another field of
15 practice other than surveying and also who has a surveyor
16 license by examination and has practiced surveying for at
17 least ten years; and

18 (3) One citizen member who is not regulated under the
19 provisions of this article and does not perform any services
20 related to the practice of surveying under the provisions of
21 this article.

22 (d) Each licensed member of the board, at the time of his
23 or her appointment, must have held a license in this state for
24 a period of not less than three years immediately preceding
25 the appointment.

26 (e) Each member must be appointed by the Governor, by
27 and with the advice and consent of the Senate, and must be
28 a resident of this state during the appointment term.

(f) The term of each board member is four years.

(g) No member may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(h) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall designate one of its members as chairperson and one member as secretary-treasurer.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

(m) A majority of the members of the board shall constitute a quorum.

(n) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson, or upon the written request of two members, at such time and place as designated in the call or request.

§30-13A-5. Powers and duties of the board.

The board has all the powers and duties set forth in article one of this chapter and also the following powers and duties:

(1) Hold meetings, conduct hearings and administer examinations and reexaminations;

(2) Set the requirements for a license, endorsement, surveyor-in-charge and certificate of authorization;

(3) Establish qualifications for licensure and procedures for submitting, approving and disapproving applications for a license, endorsement and certificate of authorization;

(4) Examine the qualifications of any applicant for a license and endorsement;

(5) Prepare, conduct, administer and grade examinations and reexaminations required under the provisions of this article;

(6) Determine the passing grade for the examinations and reexaminations required under the provisions of this article;

(7) Administer, or contract with third parties to administer, the examinations and reexaminations required under the provisions of this article;

(8) Maintain records of the examinations and reexaminations the board or a third party administers, including the number of persons taking the examination or reexamination and the pass and fail rate;

(9) Maintain an accurate registry of names and addresses of all licensees and endorsees;

(10) Maintain an accurate registry of names and addresses of firms holding a certificate of authorization;

(11) Establish the standards for surveys;

(12) Define the fees charged under the provisions of this article;

(13) Issue, renew, deny, suspend, revoke or reinstate licenses and endorsements, and discipline such persons;

(14) Issue, renew, deny, suspend, revoke or reinstate certificates of authorization and discipline such firms;

(15) Establish and implement the continuing education requirements for licensees and endorsees;

(16) Sue and be sued in its official name as an agency of this state;

(17) Hire, set the job requirements for, fix the compensation of and discharge investigators and the employees necessary to enforce the provisions of this article;

(18) Investigate alleged violations of the provisions of this article, the rules promulgated hereunder, and orders and final decisions of the board;

(19) Conduct hearings upon charges calling for discipline of a licensee, endorsee or certificate holder, or revocation or suspension of a license, endorsement or certificate of authorization;

(20) Set disciplinary action and issue orders;

(21) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(22) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-13A-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:

5 (1) Setting the standards and requirements for licensure,
6 endorsement, surveyor-in-charge and certificate of authorization;

7 (2) Setting the procedure for examinations and
8 reexaminations;

9 (3) Establishing requirements for third parties to
10 administer examinations and reexaminations;

11 (4) Establishing procedures for the issuance and renewal
12 of a license, endorsement and certificate of authorization;

13 (5) Setting a schedule of fees;

14 (6) Establishing and implementing requirements for
15 continuing education for licensees and endorsees;

16 (7) Evaluating the curriculum, experience and the
17 instructional hours required for a license and endorsement;

18 (8) Denying, suspending, revoking, reinstating or limiting
19 the practice of a licensee, endorsee or certificate holder;

20 (9) Establishing electronic signature requirements;

21 (10) Establishing minimum standards for surveys;

22 (11) Establishing a process to record plats;

23 (12) Establishing seal and document certification
24 standards; and

(13) Proposing any other rules or taking other action necessary to effectuate the provisions of this article.

(b) All rules in effect on July 1, 2010, shall remain in effect until they are amended, modified, repealed or replaced.

§30-13A-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Professional Surveyors Fund" which fund is continued. The fund shall be used by the board for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special revenue fund from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

§30-13A-8. Education, experience and examination requirements for a surveying license.

(a) Before a person may apply for a surveying license, the person must have completed one of the following educational, experience and examination requirements:

(1) Has a four-year degree or a bachelor degree in surveying approved by the board, which degree must include a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has two years or more of experience in surveying in responsible charge, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination;

(2) Has a four-year degree or a bachelor degree, has completed a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has four years or more of experience in surveying, including two years of experience in responsible charge under the direct supervision of a licensee or a person authorized in another jurisdiction to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination; or

(3) Has a two-year degree or an associate degree in surveying or a related field approved by the board, which degree must include a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has four years or more of experience in surveying, including two years of experience in responsible charge under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination.

(b) A person graduating from a two-year or four-year approved surveying degree program with a grade point average of 3.0 or higher is permitted to take the examination in the fundamentals of land surveying during his or her final semester.

(c) A person must pass the examination in the fundamentals of land surveying and complete the work experience before he or she is allowed to take the examination in the principles and practice of land surveying and the West Virginia examination.

(d) The examination in the fundamentals of land surveying, the examination in the principles and practice of

land surveying and the West Virginia examination shall each be held at least once each year at the time and place determined by the board. A person who fails to pass all or any part of an examination may apply for reexamination, as prescribed by the board, and shall furnish additional information and fees as required by the board.

(e) A person who began the education, experience or examination requirements and were approved by the board prior to December 31, 2004, have until December 31, 2012, to complete such requirements for licensure.

§30-13A-9. Surveying license requirements.

(a) The board shall issue a surveying license to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least eighteen years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has not been convicted of a crime involving moral turpitude; and

(6) Has completed all of one of the education, experience and examination requirements set out in section eight of this article.

(b) An application for a surveying license shall be made on forms provided by the board and include the following:

(1) Name and address of the applicant;

(2) Applicant's education and experience;

(3) Location and date of passage of all the examinations;

(4) Names of five persons for reference, at least three of whom shall be licensees or persons authorized in another jurisdiction to engage in the practice of surveying, and who have knowledge of the applicant's work; and

(5) Any other information the board prescribes.

(c) An applicant shall pay all the applicable fees.

(d) A license to practice surveying issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license to practice surveying issued by the board prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-13A-10. Scope of Practice.

(a) A licensee may measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements. The practice of surveying can be any of the following, but not limited to:

(1) The performance of a boundary, cadastral, construction, geodetic control, hydrographic, land, mortgage/loan inspection, oil or gas well, partition, photogrammetry, retracement, subdivision or surface mine survey; or

(2) The location, relocation, establishment, reestablishment, laying out or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement, strip or alignment or elevation of any fixed works by a licensed surveyor.

15 (b) Activities that must be performed under the
16 responsible charge of a professional surveyor, unless
17 specifically exempted in subsection (c) of this section,
18 include, but are not limited to, the following:

19 (1) The creation of maps and georeferenced databases
20 representing authoritative locations for boundaries, the
21 location of fixed works, or topography;

22 (2) Maps and georeferenced databases prepared by any
23 person, firm, or government agency where that data is
24 provided to the public as a survey product;

25 (3) Original data acquisition, or the resolution of conflicts
26 between multiple data sources, when used for the
27 authoritative location of features within the following data
28 themes: geodetic control, orthoimagery, elevation and
29 hydrographic, fixed works, private and public boundaries,
30 and cadastral information;

31 (4) Certification of positional accuracy of maps or
32 measured survey data;

33 (5) Adjustment or authoritative interpretation of raw
34 survey data;

35 (6) Geographic Information System (GIS) - based parcel
36 or cadastral mapping used for authoritative boundary
37 definition purposes wherein land title or development rights
38 for individual parcels are, or may be, affected;

39 (7) Authoritative interpretation of maps, deeds, or other
40 land title documents to resolve conflicting data elements;

41 (8) Acquisition of field data required to authoritatively
42 position fixed works or cadastral data relative to geodetic
43 control; and

(9) Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

(c) The following items are not included as activities within the practice of surveying:

(1) The creation of general maps:

(A) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;

(B) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication;

(C) Prepared for or by education institutions for use in the curriculum of any course of study;

(D) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; or

(E) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users guides.

(2) The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(3) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that

73 cadastre, provided the data are clearly not intended to
74 authoritatively represent property boundaries. This includes
75 tax maps and zoning maps.

76 (4) The preparation of any document by any federal
77 government agency that does not define real property
78 boundaries. This includes civilian and military versions of
79 quadrangle topographic maps, military maps, satellite
80 imagery, and other such documents.

81 (5) The incorporation or use of documents or databases
82 prepared by any federal agency into a GIS/LIS, including but
83 not limited to federal census and demographic data,
84 quadrangle topographic maps, and military maps.

85 (6) Inventory maps and databases created by any
86 organization, in either hard-copy or electronic form, of
87 physical features, facilities, or infrastructure that are wholly
88 contained within properties to which they have rights or for
89 which they have management responsibility. The distribution
90 of these maps and/or databases outside the organization must
91 contain appropriate metadata describing, at a minimum, the
92 accuracy, method of compilation, data source(s) and date(s),
93 and disclaimers of use clearly indicating that the data are not
94 intended to be used as a survey product.

95 (7) Maps and databases depicting the distribution of
96 natural resources or phenomena prepared by foresters,
97 geologists, soil scientists, geophysicists, biologists,
98 archeologists, historians, or other persons qualified to
99 document such data.

100 (8) Maps and georeferenced databases depicting physical
101 features and events prepared by any government agency
102 where the access to that data is restricted by statute. This
103 includes georeferenced data generated by law enforcement
104 agencies involving crime statistics and criminal activities.

§30-13A-11. Exemptions from licensing.

(a) The following persons are exempt from licensure under the provisions of this article:

(1) Any employee of a person or firm, when such employee is engaged in the practice of land surveying exclusively for the person or firm, by which employed, or, if a corporation, its parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold himself, herself or itself out to the public as being engaged in the business of land surveying.

(2) Any employee or officer of the United States, this state or any political subdivision thereof, or their agents, when such employee is engaged in the practice of land surveying exclusively for such governmental unit: *Provided,* That each county surveyor of lands first elected or first appointed after January 1, 2013, pursuant to section 1, article IX of the West Virginia Constitution, shall be a surveyor licensed pursuant to the provisions of this article and such licensee shall be in good standing.

(b) The minimum standards for surveys, established by the board, apply notwithstanding the exemptions provided by this section.

§30-13A-12. Surveyor intern requirements.

(a) To be recognized as a surveyor intern by the board, a person must meet the following requirements:

(1) Is of good moral character;

(2) Is at least eighteen years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has not been convicted of a crime involving moral turpitude;

(6) Has completed one of the education requirements set out in section eight of this article; and

(7) Has passed an examination in the fundamentals of land surveying.

(b) A surveyor intern must pass the principles and practice of land surveying examination and the West Virginia examination within ten years of passing the fundamentals of land surveying examination. If the examinations are not passed within ten years, then the surveyor intern must retake the fundamentals of land surveying examination.

§30-13A-13. License from another state.

The board may issue a license to practice surveying in this state to an applicant of good moral character who holds a valid license or other authorization to practice surveying from another state if the applicant demonstrates that:

(1) He or she or she holds a license or other authorization to practice surveying in another state which was granted after completion of educational, experience and examinations requirements substantially equivalent to those required in this state;

(2) He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license or other authorization to practice surveying and has never had a license or other authorization to practice surveying revoked;

15 (3) He or she has not previously failed an examination for
16 licensure in this state;

17 (4) He or she has paid all the applicable fees; and

18 (5) Has completed such other action as required by the
19 board.

§30-13A-14. License, endorsement and certificate of authorization renewal requirements.

1 (a) A licensee or endorsee wanting to continue in active
2 practice shall, annually or biennially, on or before July 1,
3 renew his or her license or endorsement and pay a renewal
4 fee.

5 (b) A certificate holder wanting to continue in active
6 practice shall, annually or biennially, on or before January 1,
7 renew the certificate and pay a renewal fee.

8 (c) The board shall charge a fee for each a renewal and a
9 late fee for any renewal not paid by the due date.

10 (d) The board shall require as a condition of renewal that
11 each licensee or endorsee complete continuing education.

12 (e) The board may deny an application for renewal for
13 any reason which would justify the denial of an original
14 application for a license, endorsement or certificate of
15 authorization.

16 (f) The board may authorize the waiving of the renewal
17 fee of a licensee or endorsee during the period when he or
18 she is on active duty with any branch of the armed services.

§30-13A-15. Inactive license requirements.

(a) A licensee who does not want to continue in active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status shall pay an inactive fee and is exempt from the continuing education requirements and cannot practice in this state.

(c) When an inactive licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as determined by the board.

§30-13A-16. Delinquent and expired license requirements.

(a) If a license is not renewed when due, then the board shall automatically place the licensee on delinquent status.

(b) The fee for a person on delinquent status shall increase at a rate, determined by the board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of thirty-six months.

(c) Within thirty-six months of being placed on delinquent status, if a licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as determined by the board.

(d) After thirty-six months of being placed on delinquent status, a license is automatically placed on expired status and cannot be renewed. A person whose license has expired must reapply for a new license.

§30-13A-17. Retired license requirements.

(a) A licensee who does not want to continue practicing surveying and who has chosen to retire shall notify the board in writing and may be granted retired status.

(b) A person granted retired status shall be given the honorific title of "Professional Surveyor, Retired" and cannot practice in this state.

§30-13A-18. Requirements for when a person fails an examination.

(a) Any person failing any of the examinations for surveying is not permitted to work as a licensed surveyor under the provisions of this article until the person has passed all the examinations.

(b) A person failing the fundamentals of land surveying examination may still gain experience as required in section eight of this article until he or she passes the examination.

(c) A person who has passed the fundamentals of land surveying examination, but failed the principles and practice examination or West Virginia examination may only work as a surveyor intern under the direct supervision of a licensee or a person authorized in another jurisdiction to engage in the practice of surveying until he or she passes all of the examinations.

§30-13A-19. Display of license, endorsement and certificate of authorization.

(a) The board shall prescribe the form for a license, endorsement and certificate of authorization and may issue a duplicate license, endorsement and certificate of authorization upon payment of a fee.

(b) A licensee, endorsee and certificate holder shall conspicuously display his or her license, endorsement or certificate of authorization at his or her principal place of practice.

§30-13A-20. Certificate of authorization requirements.

(a) Each firm practicing surveying in West Virginia shall have a certificate of authorization.

(b) The board shall issue a certificate of authorization to a firm that:

(1) Practices surveying in West Virginia;

(2) Provides proof that the firm has employed a surveyor-in-charge;

(3) Has paid all applicable fees; and

(4) Completes such other requirements as specified by the board.

§30-13A-21. Surveyor-in-charge requirements.

(a) A firm practicing surveying must operate all surveying activities under the supervision and management of a surveyor-in-charge who shall be a licensee who is licensed in this state.

(b) The designated surveyor-in-charge is responsible for the surveying work in this state provided by the firm.

(c) A licensee cannot be designated as a surveyor-in-charge for more than one firm without approval of the board.

(d) A licensee who performs part-time or consulting surveying services for a firm cannot be designated as a surveyor-in-charge for that firm unless the licensee is an officer, a majority interest holder or owner of the firm.

(e) The responsibilities of a surveyor-in-charge include:

(1) Renewal of the certificate of authorization;

(2) Notification to the board of any change in the surveyor-in-charge;

(3) Supervising the firm's employees, including licensees, and other personnel providing surveying services in this state; and

(4) Ensuring that the policies of the firm adhere to the provisions of this article.

(f) The board may authorize a licensee to supervise the work of an individual that is not an employee of the licensee, nor is employed by the same firm as the licensee. The potential supervisor must apply to the board for this authorization.

§30-13A-22. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or certificate holder has violated this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated this article, the

15 board may enter into a consent decree or hold a hearing for
16 the suspension or revocation of the license or certificate of
17 authorization or the imposition of sanctions against the
18 licensee or certificate holder. Any hearing shall be held in
19 accordance with the provisions of this article.

20 (e) Any member of the board or the executive secretary
21 of the board may issue subpoenas and subpoenas duces
22 tecum to obtain testimony and documents to aid in the
23 investigation of allegations against any person regulated by
24 the article.

25 (f) Any member of the board or its executive secretary
26 may sign a consent decree or other legal document on behalf
27 of the board.

28 (g) The board may, after notice and opportunity for
29 hearing, deny or refuse to renew, suspend, restrict or revoke
30 the license or certificate of authorization of, or impose
31 probationary conditions upon or take disciplinary action
32 against, any licensee or certificate holder for any of the
33 following reasons once a violation has been proven by a
34 preponderance of the evidence:

35 (1) Obtaining a license or certificate of authorization by
36 fraud, misrepresentation or concealment of material facts;

37 (2) Being convicted of a felony or other crime involving
38 moral turpitude;

39 (3) Being guilty of unprofessional conduct which placed
40 the public at risk;

41 (4) Intentional violation of a lawful order or legislative
42 rule of the board;

(5) Having had a license or other authorization to practice revoked or suspended, or other disciplinary action taken by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Administrative fine, not to exceed $1,000 per day per violation;

(5) Mandatory attendance at continuing education seminars or other training;

(6) Practicing under supervision or other restriction; or

(7) Requiring the licensee or certificate holder to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or certificate holder to pay the costs of the proceeding.

§30-13A-23. Procedures for hearing.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or certificate holder has violated provisions of this article, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-13A-24. Judicial review.

Any licensee or certificate holder adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-13A-25. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person

has knowingly violated the provisions of this article, the board may bring its information to the attention of the appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) If a court of law finds that a person knowingly violated this article, any order of the board or any final decision of the board, then the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined no less than $100 and no more than $1,000 for each violation, confinement in a regional correctional facility for up to thirty days for each violation, or both fined and confined.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-2a. Other requirements for admission to record of certain instruments.

(a) In addition to the other requirements prescribed by law, no instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be recorded or admitted to record, or filed by the county clerk unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner: *Provided,* That the recording or filing of any instrument in violation of the provisions of this section shall not invalidate or cloud the title passing by or under such instrument or affect the validity of such instrument in any respect whatever, and such recorded or filed instrument shall constitute notice with like effect as if such instrument fully complied with the provisions of this section. An instrument will be in

17 compliance with this section if it contains a statement in the
18 following form: "This instrument was prepared by (name)".

19 (b) This section does not apply to any instrument
20 executed prior to the effective date hereof; to any decree,
21 order, judgment or writ of any court; to any will or death
22 certificate; to any financing, continuation or termination
23 statement permitted to be filed under chapter forty-six of this
24 code; or to any instrument executed or acknowledged outside
25 of this state.

26 (c) A survey document intended to be used in the transfer
27 of real property, prepared by a licensed surveyor, and filed
28 with a county clerk or accepted by a public official of this
29 state shall have the licensed surveyor's signature and seal or
30 stamp affixed thereto.

31 (d) If a survey document, prepared by a licensed
32 surveyor, has been altered from its original form, it shall not
33 be filed with a county clerk or accepted by a public official
34 of this state, until the original licensed surveyor has initialed
35 the changes.

36 (e) A document, plan, map, drawing, exhibit, sketch or
37 pictorial representation prepared by a person exempted under
38 the provisions of thirteen-a, chapter thirty of this code, is not
39 required to have the signature and seal affixed thereto.

40 (f) A document, plan, map, drawing, exhibit, sketch or
41 pictorial representation altered by a person not licensed under
42 the provisions of article thirteen-a, chapter thirty of this code,
43 shall have the alteration initialed by a surveyor licensed
44 under the provisions of article thirteen-a, chapter thirty of this
45 code.

CHAPTER 149

(S. B. 372 - By Senators Stollings, Jenkins, Unger, Foster and Edgell)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to repeal §30-3-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-3-2, §30-3-4, §30-3-5, §30-3-6 and §30-3-8 of said code, all relating to the Board of Medicine; providing definitions and current terminology; and removing outdated language.

Be it enacted by the Legislature of West Virginia:

That §30-3-18 of the Code of West Virginia, 1931, as amended, be repealed; and that §30-3-2, §30-3-4, §30-3-5, §3-3-6 and §30-3-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-2. Purpose.
§30-3-4. Definitions.
§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.
§30-3-6. Conduct of business of West Virginia Board of Medicine; meetings; officers; compensation; expenses; quorum.
§30-3-8. State health officer to act as secretary of the board.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure
2 and professional discipline of physicians and podiatrists and
3 for the licensure and professional discipline of physician

4 assistants and to provide a professional environment that
5 encourages the delivery of quality medical services within
6 this state.

§30-3-4. Definitions.

1 As used in this article:

2 (1) "Board" means the West Virginia Board of Medicine
3 established in section five of this article.

4 (2) "Medical peer review committee" means a committee
5 of, or appointed by, a state or local professional medical
6 society, or a committee of, or appointed by, a medical staff
7 of a licensed hospital, long-term care facility or other health
8 care facility, or any health care peer review organization as
9 defined in section one, article three-c of this chapter, or any
10 other organization of professionals in this state formed
11 pursuant to state or federal law and authorized to evaluate
12 medical and health care services.

13 (3) "Practice of medicine and surgery" means the
14 diagnosis or treatment of, or operation or prescription for,
15 any human disease, pain, injury, deformity or other physical
16 or mental condition. "Surgery" includes the use on humans
17 of lasers, ionizing radiation, pulsed light and radiofrequency
18 devices. The provisions of this section do not apply to any
19 person who is a duly licensed health care provider under
20 other pertinent provisions of this code and who is acting
21 within the scope of his or her license.

22 (4) "Practice of podiatry" means the examination,
23 diagnosis, treatment, prevention and care of conditions and
24 functions of the human foot and ankle by medical, surgical
25 and other scientific knowledge and methods; with surgical
26 treatment of the ankle authorized only when a podiatrist has
27 been granted privileges to perform ankle surgery by a
28 hospital's medical staff credentialing committee based on the

training and experience of the podiatrist; and medical and surgical treatment of warts and other dermatological lesions of the hand which similarly occur in the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, the anesthesia must be administered by, or under the direction of, an anesthesiologist or certified registered nurse anesthetist authorized under the State of West Virginia to administer anesthesia. A medical evaluation shall be made by a physician of every patient prior to the administration of other than local anesthesia.

(5) "State health officer" means the commissioner for the Bureau for Public Health or his or her designee, which officer or designee shall be a physician and shall act as secretary of the board and shall carry out any and all responsibilities assigned in this article to the secretary of the board.

§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.

The West Virginia Board of Medicine has assumed, carried on and succeeded to all the duties, rights, powers, obligations and liabilities heretofore belonging to or exercised by the Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates, permits and other acts and undertakings of the medical licensing board of West Virginia as heretofore constituted have continued as those of the West Virginia Board of Medicine until they expired or were amended, altered or revoked. The board remains the sole authority for the issuance of licenses to practice medicine and surgery and to practice podiatry and to practice as physician assistants in this state under the supervision of physicians licensed under this article. The board shall continue to be a regulatory and disciplinary body for the practice of medicine and surgery and the practice of podiatry and for physician assistants in this state.

17 The board shall consist of fifteen members. One member
18 shall be the state health officer ex officio, with the right to
19 vote as a member of the board. The other fourteen members
20 shall be appointed by the Governor, with the advice and
21 consent of the Senate. Eight of the members shall be
22 appointed from among individuals holding the degree of
23 doctor of medicine and two shall hold the degree of doctor of
24 podiatric medicine. One member shall be an individual
25 licensed by the board as a physician assistant. Each of these
26 members must be duly licensed to practice his or her
27 profession in this state on the date of appointment and must
28 have been licensed and actively practicing that profession for
29 at least five years immediately preceding the date of
30 appointment. Three lay members shall be appointed to
31 represent health care consumers. Neither the lay members
32 nor any person of the lay members' immediate families shall
33 be a provider of or be employed by a provider of health care
34 services. The state health officer's term shall continue for the
35 period that he or she holds office as state health officer. Each
36 other member of the board shall be appointed to serve a term
37 of five years: *Provided,* That the members of the Board of
38 Medicine holding appointments on the effective date of this
39 section shall continue to serve as members of the Board of
40 Medicine until the expiration of their term unless sooner
41 removed. Each term shall begin on October 1 of the
42 applicable year, and a member may not be appointed to more
43 than two consecutive full terms on the board.

44 A person is not eligible for membership on the board
45 who is a member of any political party executive committee
46 or, with the exception of the state health officer, who holds
47 any public office or public employment under the federal
48 government or under the government of this state or any
49 political subdivision thereof.

50 In making appointments to the board, the Governor shall,
51 so far as practicable, select the members from different
52 geographical sections of the state. When a vacancy on the

board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality: *Provided,* That the expiration, surrender or revocation of the professional license by the board of a member of the board shall cause the membership to immediately and automatically terminate.

§30-3-6. Conduct of business of West Virginia Board of Medicine; meetings; officers; compensation; expenses; quorum.

Every two years the board shall elect from among its members a president and vice president. Regular meetings shall be held as scheduled by the rules of the board. Special meetings of the board may be called by the joint action of the president and vice president or by any three members of the board on seven days' prior written notice by mail postage prepaid or electronic means or, in case of emergency, on two days' notice by telephone and electronic means. With the exception of the state health officer, members of the board shall receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

A majority of the membership of the board constitutes a quorum for the transaction of business, and business is transacted by a majority vote of a quorum, except for disciplinary actions which shall require the affirmative vote of not less than five members or a majority vote of those present, whichever is greater.

Meetings of the board shall be held in public session. Disciplinary proceedings, prior to a finding of probable cause as provided in subsection (p), section fourteen of this article,

21 shall be held in closed sessions, unless the party subject to
22 discipline requests that the proceedings be held in public
23 session.

§30-3-8. State health officer to act as secretary of the board.

1 The state health officer, in addition to being a member of
2 the board, shall act as its secretary. He or she shall, together
3 with the president of the board, sign all licenses, reports,
4 orders and other documents that may be required by the
5 board in the performance of its duties.

CHAPTER 150

(Com. Sub. for H. B. 4425 - By Delegates Perdue, Hatfield, Border, Hartman, Marshall, Michael, Moore, Phillips, Rodighiero, Staggers and Wooton)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-20, relating to the development of a pilot program for unlicensed persons to administer medications in a nursing home by the Board of Registered Professional Nurses; requiring approval by the Legislative Oversight Commission on Health and Human Resources Accountability prior to implementation of the pilot; and granting rule-making authority to the Board of Registered Professional Nurses to effectuate the provisions of the pilot project.

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 §30-7-20, to read as follows:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-20. Pilot program.

The board shall develop a pilot program for unlicensed personnel to administer medication in a nursing home including the development of a training program in cooperation with the West Virginia Board of Practical Nurses and the West Virginia Health Care Association. Prior to implementation of the pilot program, the board shall submit its plans for approval to the Legislative Oversight Commission for Health and Human Resources Accountability for its consideration prior to the 2011 Legislative session. The Board of Nursing shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code effectuate the provisions of this section.

CHAPTER 151

(S. B. 584 - By Senators Bowman and Chafin)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §30-7B-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Center for Nursing; detailing the center's data collection responsibilities

and establishing that data submitted to the center is confidential; and deleting a statutory provision regarding establishment of a loan repayment program.

Be it enacted by the Legislature of West Virginia:

That §30-7B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-4. Center's powers and duties.

1 The West Virginia Center for Nursing shall have the
2 following powers and duties:

3 (1) Establish a statewide strategic plan to address the
4 nursing shortage in West Virginia;

5 (2) Establish and maintain a database of statistical
6 information regarding nursing supply, demand and turnover
7 rates in West Virginia and future projections.

8 (A) The Center will be responsible for collecting data from
9 employers and nurses (LPN, RN, APN) on at least an annual
10 basis. The Center shall collaborate with employers and other
11 state agencies to develop the best method for data collection.

12 (B) The data shall include vacancy rates, annual turnover
13 rate and information about hard to fill vacancies for all levels
14 of nurses.

15 (C) As used in this article the term:

16 (i) "Vacancy rate" shall mean the number of vacant
17 budgeted nursing positions divided by the total number of
18 budgeted nursing positions at a point in time;

19 (ii) "Annual turnover rate" shall mean the number of
20 nurses who leave an organization in a year divided by the
21 average number of nurses employed in that year;

22 (iii) "Hard to fill vacancy" shall mean recruitment
23 difficulties experienced, due to a number of reasons including,
24 but not limited to, lack of applicants, applicants that lack the
25 proper qualifications, competition, and undesirable hours.

26 (D) Employers of nurses who are surveyed shall be
27 required to provide data annually by the deadline established
28 by the Center.

29 (E) Data shall be reported by the center in aggregate form
30 by workforce region.

31 (F) Data shall be used by the Center to strategically plan
32 for recruitment and retention initiatives by region.

33 (G) Data received under this section that contains
34 information identifying specific patients or health care
35 facilities is confidential, is not subject to disclosure and may
36 not be released unless all identifying information is removed.

37 (3) Coordinate communication between the organizations
38 that represent nurses, health care providers, businesses,
39 consumers, legislators and educators;

40 (4) Enhance and promote recruitment and retention of
41 nurses by creating reward, recognition and renewal programs;

42 (5) Promote media and positive image building efforts for
43 nursing, including establishing a statewide media campaign to
44 recruit students of all ages and backgrounds to the various
45 nursing programs throughout West Virginia;

(6) Promote nursing careers through educational and scholarship programs, programs directed at nontraditional students and other workforce initiatives;

(7) Explore solutions to improve working environments for nurses to foster recruitment and retention;

(8) Explore and establish scholarship programs designed to benefit nurses who remain in West Virginia after graduation and work in hospitals and other health care institutions;

(9) Establish grants and other programs to provide financial incentives for employers to encourage and assist with nursing education, internships and residency programs;

(10) Develop incentive and training programs for long-term care facilities and other health care institutions to use self-assessment tools documented to correlate with nurse retention, such as the magnet hospital program;

(11) Explore and evaluate the use of year-round day, evening and weekend nursing training and education programs;

(12) Establish a statewide hotline and website for information about the Center and its mission and nursing careers and educational opportunities in West Virginia;

(13) Evaluate capacity for expansion of nursing programs, including the availability of faculty, clinical laboratories, computers and software, library holdings and supplies;

(14) Oversee development and implementation of education and matriculation programs for health care providers covering certified nursing assistants, licensed practical nurses, registered professional nurses, advanced nurse practitioners and other advanced degrees;

75 (15) Seek to improve the compensation of all nurses,
76 including nursing educators; and

77 (16) Perform such other activities as needed to alleviate the
78 nursing shortage in West Virginia.

CHAPTER 152

(Com. Sub. for S. B. 230 - By Senators Bowman, Kessler, Yost, Browning, Snyder, D. Facemire and Wells)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to repeal §30-8-2a, §30-8-2b, §30-8-3a, §30-8-3b and §30-8-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-8-1, §30-8-2, §30-8-3, §30-8-4, §30-8-5, §30-8-6, §30-8-7, §30-8-8, §30-8-9, §30-8-10 and §30-8-11 of said code; and to amend said code by adding thereto eleven new sections, designated §30-8-12, §30-8-13, §30-8-14, §30-8-15, §30-8-16, §30-8-17, §30-8-18, §30-8-19, §30-8-20, §30-8-21 and §30-8-22, all relating to the Board of Optometry; prohibiting the practice of optometry without a license or permit; providing other applicable sections; providing definitions; providing the board composition; setting forth the powers and duties of the board; clarifying the rule-making authority; clarifying the scope of practice; establishing expanded authority for injections; continuing a special revenue account; licensing requirements; exemptions; providing for licensure for persons licensed in another state; clarifying prescriptive authority; clarifying injection authority; establishing special volunteer license; optometric business requirements; establishing renewal requirements; providing permit requirements; setting forth

grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-8-2a, §30-8-2b, §30-8-3a, §30-8-3b, and §30-8-5a of the Code of West Virginia, 1931, as amended, be repealed; that §30-8-1, §30-8-2, §30-8-3, §30-8-4, §30-8-5, §30-8-6, §30-8-7, §30-8-8, §30-8-9, §30-8-10 and §30-8-11 of said code be amended and reenacted; and that said code be amended by adding thereto eleven new sections, designated §30-8-12, §30-8-13, §30-8-14, §30-8-15, §30-8-16, §30-8-17, §30-8-18, §30-8-19, §30-8-20, §30-8-21 and §30-8-22, all to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-1. Unlawful acts.
§30-8-2. Applicable law.
§30-8-3. Definitions.
§30-8-4. Board of Optometry.
§30-8-5. Powers and duties of the board.
§30-8-6. Rulemaking.
§30-8-7. Feeds; special revenue account; administrative fine.
§30-8-8. License to practice optometry.
§30-8-9. Scope of Practice.
§30-8-10. Exceptions from licensure.
§30-8-11. Issuance of license; renewal of license; renewal fee.
§30-8-12. Temporary permits.
§30-8-13. License from another jurisdiction; license to practice in this state.
§30-8-14. Prescriptive authority.
§30-8-15. Administration of injectable pharmaceutical agents.
§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.
§30-8-17. Optometric business entities.
§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-8-19. Procedures for hearing; right of appeal.
§30-8-20. Judicial review.
§30-8-21. Criminal proceedings; penalties.
§39-8-22. Single act evidence of practice.

§30-8-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice optometry in this state without a license or permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are an optometrist unless the person has been duly licensed or permitted under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of optometry, except through a licensee or permittee.

(c) A licensee may not practice optometry as an employee of any commercial or mercantile establishment.

(d) A licensee may not practice optometry on premises not separate from premises whereon eyeglasses, lenses, eyeglass frames or any other merchandise or products are sold by any other person. For the purposes of this section, any room or suite of rooms in which optometry is practiced shall be considered separate premises if it has a separate and direct entrance from a street or public hallway or corridor within a building, which corridor is partitioned off by partitions from floor to ceiling.

(e) A person who is not licensed under this article as an optometrist may not characterize himself or herself as an "optometrist" or "doctor of optometry" nor may a person use the designation "OD".

§30-8-2. Applicable law.

The practice of optometry and the Board of Optometry are subject to the provisions of article one of this chapter, the provisions of this article and the board's rules.

§30-8-3. Definitions.

As used in this article:

(a) "Appendages" means the eyelids, the eyebrows, the conjunctiva and the lacrimal apparatus.

(b) "Applicant" means any person making application for a license, certificate or temporary permit under the provisions of this article.

(c) "Board" means the West Virginia Board of Optometry.

(d) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity owned by licensees that practices optometry.

(e) "Certificate" means a prescription certificate issued under section fifteen of this article.

(f) "Certificate holder" means a person authorized to prescribe certain drugs under section fifteen of this article.

(g) "Examination, diagnosis and treatment" means a method compatible with accredited optometric education and professional competence pursuant to this article.

(h) "License" means a license to practice optometry.

(i) "Licensee" means an optometrist licensed under the provisions of this article.

(j) "Ophthalmologist" means a physician specializing in ophthalmology licenced in West Virginia to practice medicine and surgery under article thereof this chapter or osteopathy under article fourteen of this chapter.

(k) "Permittee" means a person holding a temporary permit.

(l) "Practice of optometry" means the examining, diagnosing and treating of any visual defect or abnormal condition of the human eye or its appendages within the scope established in this article or associated rules.

(m) "Temporary permit" or "permit" means a permit issued to a person who has graduated from an approved school, has taken the examination prescribed by the board, and is awaiting the results of the examination.

§30-8-4. Board of Optometry.

(a) The West Virginia Board of Optometry is continued. The members of the board in office on July 1, 2010, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) The board shall consist of the following members appointed by the Governor, by and with the advice and consent of the Senate:

(1) Five licensed optometrists; and

(2) Two citizen members, who are not licensed under the provisions of this article and who do not perform any services related to the practice of the profession regulated under the provisions of this article.

(c) Each licensed member of the board, at the time of his or her appointment, must have held a professional license in this state for a period of not less than three years immediately preceding the appointment.

(d) Each member of the board must be a resident of this state during the appointment term.

(e) The term shall be three years. A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified.

(f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(g) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(h) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(i) The board shall elect annually a president and a secretary-treasurer from its members who serve at the will of the board.

(j) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(k) A majority of the members of the board constitutes a quorum.

(l) The board shall hold at least two meetings a year. Other meetings may be held at the call of the president or upon the written request of two members at the time and place as designated in the call or request.

(m) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-8-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses, certificates and permits;

(3) Establish procedures for submitting, approving and rejecting applications for licenses, certificates and permits;

(4) Determine the qualifications of any applicant for licenses, certificates and permits;

(5) Prepare, conduct, administer and grade examinations for licenses;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations by the board or a third party administer, including the number of persons taking the examinations and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive secretary;

21 (9) Maintain an office and hire, discharge, establish the
22 job requirements and fix the compensation of employees,
23 investigators and contracted employees necessary to enforce
24 the provisions of this article;

25 (10) Investigate alleged violations of the provisions of
26 this article, legislative rules, orders and final decisions of the
27 board;

28 (11) Conduct disciplinary hearings of persons regulated
29 by the board;

30 (12) Determine disciplinary action and issue orders;

31 (13) Institute appropriate legal action for the enforcement
32 of the provisions of this article;

33 (14) Maintain an accurate registry of names and
34 addresses of all licensees regulated by the board;

35 (15) Keep accurate and complete records of its
36 proceedings, and certify the same as may be necessary and
37 appropriate;

38 (16) Establish the continuing education requirements for
39 licensees;

40 (17) Issue, renew, combine, deny, suspend, revoke or
41 reinstate licenses, certificates and permits;

42 (18) Establish a fee schedule;

43 (19) Propose rules in accordance with the provisions of
44 article three, chapter twenty-nine-a of this code to implement
45 the provisions of this article; and

46 (20) Take all other actions necessary and proper to
47 effectuate the purposes of this article.

48 (c) The board may:

49 (1) Contract with third parties to administer the
50 examinations required under the provisions of this article;

51 (2) Sue and be sued in its official name as an agency of
52 this state; and

53 (3) Confer with the Attorney General or his or her
54 assistant in connection with legal matters and questions.

§30-8-6. Rulemaking.

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 licenses, certificates
6 and permits;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (4) Educational and experience requirements;

11 (5) The passing grade on the examinations;

12 (6) Standards for approval of courses and curriculum;

13 (7) Procedures for the issuance and renewal of licenses,
14 certificates and permits;

15 (8) A fee schedule;

16 (9) A prescription drug formulary classifying those
17 categories of oral drugs rational to the diagnosis and
18 treatment of visual defects or abnormal conditions of the
19 human eye and its appendages, which may be prescribed by
20 licensees from Schedules III, IV and V of the Uniform
21 Controlled Substances Act. The drug formulary may also
22 include oral antibiotics, oral nonsteroidal anti-inflammatory
23 drugs and oral carbonic anhydrase inhibitors;

24 (10) Requirements for prescribing and dispensing contact
25 lenses that contain and deliver pharmaceutical agents that
26 have been approved by the Food and Drug Administration as
27 a drug;

28 (11) Continuing education requirements for licensees;

29 (12) The procedures for denying, suspending, revoking,
30 reinstating or limiting the practice of licensees, certificate
31 holders and permittees;

32 (13) Requirements for inactive or revoked licenses,
33 certificates or permits;

34 (14) Requirements for an expanded scope of practice for
35 those procedures that are taught at 50% of all accredited
36 optometry schools; and

37 (15) Any other rules necessary to effectuate the
38 provisions of this article.

39 (b) All of the board's rules in effect on July 1, 2010, shall
40 remain in effect until they are amended or repealed, and
41 references to provisions of former enactments of this article
42 are interpreted to mean provisions of this article.

(c) The board shall promulgate procedural and interpretive rules in accordance with section eight, article three, chapter twenty-nine-a of this code.

§30-8-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "West Virginia Board of Optometry Fund", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

§30-8-8. License to practice optometry.

(a) To be eligible for a license to engage in the practice of optometry, the applicant must:

(1) Be at least twenty-one years of age;

(2) Be of good moral character;

(3) Graduate from a school approved by the Accreditation Council on Optometric Education or successor organization;

(4) Pass an examination prescribed by the board;

(5) Complete an interview with the board;

(6) Not be addicted to the use of alcohol, drugs or other controlled substances;

(7) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license, which conviction has not been reversed; and

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of optometry, which conviction has not been reversed.

(b) A registration to practice issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided,* That a person holding a registration issued prior to July 1, 2010, must renew pursuant to the provisions of this article.

§30-8-9. Scope of Practice.

(a) An licensee may:

(1) Examine, diagnosis and treat diseases and conditions of the human eye and its appendage within the scope established in this article or associated rules;

(2) Administer or prescribe any drug for topical application to the anterior segment of the human eye for use in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages: *Provided,* That the licensee has first obtained a certificate;

(3)(A) Administer or prescribe any drug from the drug formulary, as established by the board pursuant to section six of this article, for use in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages: *Provided,* That the licensee has first obtained a certificate;

16 (B) New drugs and new drug indications may be added
17 to the drug formulary by approval of the board;

18 (4) Administer epinephrine by injection to treat
19 emergency cases of anaphylaxis or anaphylactic shock;

20 (5) Prescribe and dispense contact lenses that contain and
21 deliver pharmaceutical agents and that have been approved
22 by the Food and Drug Administration as a drug;

23 (6) Prescribe, fit, apply, replace, duplicate or alter lenses,
24 prisms, contact lenses, orthoptics, vision training, vision
25 rehabilitation;

26 (7) Perform the following procedures:

27 (A) Remove a foreign body from the ocular surface and
28 adnexa utilizing a non-intrusive method;

29 (B) Remove a foreign body, external eye, conjunctival,
30 superficial, using topical anesthesia;

31 (C) Remove embedded foreign bodies or concretions
32 from conjunctiva, using topical anesthesia, not involving
33 sclera;

34 (D) Remove corneal foreign body not through to the
35 second layer of the cornea using topical anesthesia;

36 (E) Epilation of lashes by forceps;

37 (F) Closure of punctum by plug; and

38 (G) Dilation of the lacrimal puncta with or without
39 irrigation;

(8) Furnish or provide any prosthetic device to correct or relieve any defects or abnormal conditions of the human eye and its appendages;

(9) Order laboratory tests rational to the examination, diagnosis, and treatment of a disease or condition of the human eye and its appendages;

(10) Use a diagnostic laser; and

(11) A licensee is also permitted to perform those procedures authorized by the board prior to January 1, 2010.

(b) A licensee may not:

(1) Perform surgery except as provided in this article or by legislative rule;

(2) Use a therapeutic laser;

(3) Use Schedule II controlled substances;

(4) Treat systemic disease; or

(5) Present to the public that he or she is a specialist in surgery of the eye.

§30-8-10. Exceptions from licensure.

The following persons are exempt from licensure under this article:

(1) Persons licensed to practice medicine and surgery under article three of this chapter or osteopathy under article fourteen of this chapter; and

(2) Persons and business entities who sell or manufacture ocular devices in a permanently established place of business, who neither practice nor attempt to practice optometry.

§30-8-11. Issuance of license; renewal of license; renewal fee.

(a) A licensee shall annually or biennially on or before July 1, renew his or her license by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.

(b) The board shall charge a fee for renewal of a license, and a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal of a license that each licensee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-8-12. Temporary permits.

(a) Upon proper application and the payment of a fee, the board may issue, without examination, a temporary permit to engage in the practice of optometry in this state.

(b) If the permittee receives a passing score on the examination, a temporary permit expires thirty days after the permittee receives the results of the examination.

(c) If the permittee receives a failing score on the examination, the temporary permit expires immediately.

(d) An applicant under this subsection may only be issued one temporary permit. Upon the expiration of a temporary permit, a person may not practice as an optometrist until he or she is fully licensed under the provisions of this article. In no event may a permittee practice on a temporary permit beyond a period of ninety consecutive days.

(e) A temporary permittee under this section shall work under the supervision of a licensee, with the scope of such supervision to be defined by the board by legislative rule.

§30-8-13. License from another jurisdiction; license to practice in this state.

(a) The board may issue a license to practice to an applicant of good moral character who holds a valid license or other authorization to practice optometry from another jurisdiction, if the applicant demonstrates that he or she:

(1) Holds a license or other authorization to practice optometry in another state which requirements are substantially equivalent to those required in this state;

(2) Does not have charges pending against his or her license or other authorization to practice, and has never had a license or other authorization to practice revoked;

(3) Has not previously failed an examination for professional licensure in this state;

(4) Has paid the applicable fee;

(5) Has passed the examination prescribed by the board; and

(6) Has fulfilled any other requirement specified by the board.

(b) In its discretion, the board may interview and examine an applicant for licensing under this section. The board may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

§30-8-14. Prescriptive authority.

1 (a) A licensee may prescribe: (1) topical pharmaceutical
2 agents, (2) oral pharmaceutical agents that are included in the
3 drug formulary established by the board pursuant to section
4 six of this article or new drugs or new drug indications added
5 by a decision of the board, and (3) contact lenses that contain
6 and deliver pharmaceutical agents that have been approved
7 by the Food and Drug Administration as a drug.

8 (b) An applicant must:

9 (1) Submit a completed application;

10 (2) Pay the appropriate fee;

11 (3) Show proof of current liability insurance coverage;

12 (4) Complete the board required training;

13 (5) Pass an examination; and

14 (6) Complete any other criteria the board may establish
15 by rule.

§30-8-15. Administration of injectable pharmaceutical agents.

1 (a) A licensee may not administer pharmaceutical agents
2 by injection, other than epinephrine to treat emergency cases
3 of anaphylaxis or anaphylactic shock, unless the provisions
4 of this section, along with any legislative rule promulgated
5 pursuant to this section, have been met.

6 (b) Additional pharmaceutical agents by injection may be
7 included in the rules for legislative approval in accordance
8 with the provisions of article three, chapter twenty-nine-a of
9 this code. These rules shall provide, at a minimum, for the
10 following:

11 (1) Establishment of a course, or provide a list of
12 approved courses, in administration of pharmaceutical agents
13 by injection;

14 (2) Definitive treatment guidelines which shall include,
15 but not be limited to, appropriate observation for an adverse
16 reaction of an individual following the administration of a
17 pharmaceutical agent by injection;

18 (3) A requirement that a licensee shall have completed a
19 board approved injectable administration course and
20 completed an American Red Cross or American Heart
21 Association basic life-support training, and maintain
22 certification in the same;

23 (4) Continuing education requirements for this area of
24 practice;

25 (5) Reporting requirements for licensees administering
26 pharmaceutical agents by injection to report to the primary
27 care physician or other licensed health care provider as
28 identified by the person receiving the pharmaceutical agent
29 by injection;

30 (6) Reporting requirements for licensees administering
31 pharmaceutical agents by injection to report to the
32 appropriate entities;

33 (7) That a licensee may not delegate the authority to
34 administer pharmaceutical agents by injection to any other
35 person; and

36 (8) Any other provisions necessary to implement the
37 provisions of this section.

38 (c) In no event may a licensee be granted authority under
39 this section to administer a pharmaceutical agent by injection
40 directly into the globe of the eye.

§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 optometrists who are retired or are retiring from the active
3 practice of optometry and 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.

7 (b) The special volunteer license shall be issued by the
8 board to optometrists licensed or otherwise eligible for
9 licensure under this article without the payment of an
10 application fee, license fee or renewal fee, and shall be issued
11 for the remainder of the licensing period, and renewed
12 consistent with the boards other licensing requirements.

13 (c) The board shall develop application forms for the
14 special volunteer license provided in this section which shall
15 contain the optometrist's acknowledgment that:

16 (1) The optometrist's practice under the special volunteer
17 license will be exclusively devoted to providing optometrical
18 care to needy and indigent persons in West Virginia;

19 (2) The optometrist will not receive any payment or
20 compensation, either direct or indirect, or have the
21 expectation of any payment or compensation, for any
22 optometrical services rendered under the special volunteer
23 license;

24 (3) The optometrist will supply any supporting
25 documentation that the board may reasonably require; and

26 (4) The optometrist agrees to continue to participate in
27 continuing education as required by the board for a special
28 volunteer license.

(d) Any optometrist who renders any optometrical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer license authorized under this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the optometrical service at the clinic unless the act or omission was the result of the optometrist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, before the rendering of any services by the optometrist at the clinic, there must be a written agreement between the optometrist and the clinic stating that the optometrist will provide voluntary uncompensated optometrical services under the control of the clinic to patients of the clinic before the rendering of any services by the optometrist at the clinic: *Provided,* That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

(e) Notwithstanding the provisions of subsection (d) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an optometrist rendering voluntary optometrical services at or for the clinic under a special volunteer license under this section.

(f) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure in this article except the fee requirements.

(g) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any optometrist whose license is or has been subject to any disciplinary action or to any optometrist who has surrendered a license or caused such license to lapse, expire and become

invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a license.

(h) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any optometrist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an optometrist who holds a special volunteer license.

§30-8-17. Optometric business entities.

(a) Only licensees may own a business entity that practices optometry.

(b) A licensee may be employed by the business entity.

(c) A business entity shall cease to engage in the practice of optometry when it is not wholly owned by licensees: *Provided,* That the personal representative of a deceased shareholder shall have a period, not to exceed eighteen months from the date of such shareholder's death, to dispose of such shares.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any

person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, certificate or permit or the imposition of sanctions against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article, and the provisions of articles five and six, chapter twenty-nine-a of this code.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the

license, certificate or permit of, impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license, certificate or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk;

(4) Intentional violation of a lawful order;

(5) Having had an authorization to practice optometry revoked, suspended, other disciplinary action taken, by the proper authorities of another jurisdiction;

(6) Having had an application to practice optometry denied by the proper authorities of another jurisdiction;

(7) Exceeded the scope of practice of optometry;

(8) Aiding or abetting unlicensed practice;

(9) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public; or

(10) False and deceptive advertising; this includes, but is not limited to, the following:

(A) Advertising "free examination of eyes," or words of similar import and meaning; or

(B) Advertising frames or mountings for glasses, contact lenses, or other optical devices which does not accurately describe the same in all its component parts.

(h) For the purposes of subsection (g) of this section disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or certificate holders to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-8-19. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare

a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, certificate holder or permittee has violated the provisions of this article or the board's legislative rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-8-20. Judicial review.

Any licensee, certificate holder or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-8-21. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee, certificate holder or permittee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be

8 fined not less than $1,000 nor more than $5,000 or confined
9 in jail not more than six months, or both fined and confined.

§30-8-22. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 153

(H. B. 4144 - By Delegates Morgan, Stephens, Swartzmiller, Talbott, Hartman, Givens, Martin, T. Walker, Rowan, C. Miller and Manypenny)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §30-10A-1, §30-10A-2, §30-10A-3, §30-10A-4, §30-10A-5, §30-10A-6, §30-10A-7, §30-10A-8 and §30-10A-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-10-1, §30-10-2, §30-10-3, §30-10-4, §30-10-5, §30-10-6, §30-10-7, §30-10-8, §30-10-9, §30-10-10, §30-10-11, §30-10-12, §30-10-13, §30-10-14, §30-10-15, §30-10-16, §30-10-17, §30-10-18, §30-10-19 and §30-10-20; and to amend said code by adding thereto three new sections, designated §30-10-21, §30-10-22 and §30-10-23, all relating to the Board of Veterinary Medicine; prohibiting the practice of veterinary medicine without a license; prohibiting the practice of veterinary technology without a registration; prohibiting the practice of

animal euthanasia without a certificate; updating definitions; adding two members to the board; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, certificate, registration and permit requirements; creating scopes of practice; establishing requirements for an animal euthanasia training program; creating a temporary permit; establishing renewal requirements; providing for exemptions from licensure; providing requirements for the display of a license, certificate, registration and permit; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing for privileged communication and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-10A-1, §30-10A-2, §30-10A-3, §30-10A-4, §30-10A-5, §30-10A-6, §30-10A-7, §30-10A-8 and §30-10A-9 of the Code of West Virginia, 1931, as amended, be repealed; that §30-10-1, §30-10-2, §30-10-3, §30-10-4, §30-10-5, §30-10-6, §30-10-7, §30-10-8, §30-10-9, §30-10-10, §30-10-11, §30-10-12, §30-10-13, §30-10-14, §30-10-15, §30-10-16, §30-10-17, §30-10-18, §30-10-19 and §30-10-20 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §30-10-21, §30-10-22 and §30-10-23, all to read as follows:

ARTICLE 10. VETERINARIANS.

§30-10-1. Unlawful acts.
§30-10-2. Applicable law.
§30-10-3. Definitions.
§30-10-4. Board of Veterinary Medicine.
§30-10-5. Powers and duties of the board.
§30-10-6. Rule-making authority.
§30-10-7. Fees; special revenue account; administrative fines.
§30-10-8. Requirements for Veterinary License.
§30-10-9. Scope of Practice for a Licensed Veterinarian.

§30-10-10. Requirements for a registered veterinary technician.
§30-10-11. Scope of practice for registered veterinary technician.
§30-10-12. Requirements to be a certified animal euthanasia technician.
§30-10-13. Requirements for certified animal euthanasia technicians program.
§30-10-14. Scope of practice for an animal euthanasia technician.
§30-10-15. Renewal requirements.
§30-10-16. Temporary permits for a veterinarian.
§30-10-17. Exemptions from article.
§30-10-18. Display of license, permit, registration and certificate.
§30-10-19. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-10-20. Procedures for hearing; right of appeal.
§30-10-21. Judicial review; appeal to Supreme Court of Appeals.
§30-10-22. Criminal proceedings; penalties.
§30-10-23. Single act evidence of practice.

§30-10-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice veterinary medicine, veterinary technology or animal euthanasia in this state without a license, registration or certificate issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a veterinarian, veterinary technician or animal euthanasia technician unless such person has been duly licensed, registered or certified under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of veterinary medicine, veterinary technology or animal euthanasia, except through a licensee, registrant or certificate holder.

§30-10-2. Applicable law.

The practice of veterinary medicine, veterinary technology and animal euthanasia, and the Board of Veterinary Medicine are subject to the provisions of article one of this chapter, the provisions of this article and the board's rules.

§30-10-3. Definitions.

As used in this article, the following words and terms have the following meanings:

(a) "Animal" means any animal other than human, and the term includes fowl, birds, amphibians, fish, and reptiles, wild or domestic, living or dead.

(b) "Animal Control Facility" means a municipal or county operated humane society or animal shelter incorporated and organized under the laws of this state, or a humane society or an animal shelter classified as 501(c)(3) by the Internal Revenue Service, with at least one certified animal euthanasia technician.

(c) "Applicant" means a person making application for a license, certificate, registration or permit, under the provisions of this article.

(d) "Board" means the West Virginia Board of Veterinary Medicine.

(e) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity performing veterinary medicine, veterinary technology or animal euthanasia.

(f) "Certificate" means an animal euthanasia technician certificate issued under the provisions of this article.

(g) "Certificate holder" means a person holding a certificate issued under the provisions of this article.

(h) "Certified animal euthanasia technician" means a person who is certified by the board to euthanize animals in accordance with the provisions of this article.

28 (i) "General Supervision" means the supervising
29 veterinarian is in the building where the animal is being
30 treated, has given instructions for treatment and is quickly and
31 easily available.

32 (j) "Indirect supervision" means the performance of
33 procedures on the orders of a supervising veterinarian.

34 (k) "License" means a veterinary medicine license issued
35 under the provisions of this article.

36 (l) "Licensee" means a person holding a license issued
37 under the provisions of this article.

38 (m) "Permit" means a temporary permit to practice
39 veterinary medicine issued by the board.

40 (n) "Permittee" means a person holding a permit issued
41 under the provisions of this article.

42 (o) "Practice of veterinary medicine" means to diagnose,
43 treat, correct, change, relieve or prevent any disease,
44 deformity, defect, injury, or other physical or mental
45 condition, of any animal, or to prescribe for or to administer to
46 any animal any drug, medicine, biologic, apparatus,
47 application, anesthetic or other therapeutic or diagnostic
48 substance or technique, or to render advice or any
49 recommendation with respect to any of the foregoing.

50 (p) "Practice of veterinary technology" means the science
51 and art of providing all aspects of professional medical care,
52 services and treatment for animals with the exceptions of
53 diagnosis, prognosis, surgery, prescription and application of
54 any treatments, drugs, medications or appliances, where a
55 valid veterinarian- client-patient relationship exists.

(q) "Registered veterinary technician" means a person who is duly registered to practice veterinary technology under the provisions of this article.

(r) "Registrant" means a person holding a registration issued under the provisions of this article.

(s) "Registration" means a veterinary technician registration issued under the provisions of this article.

(t) "Supervising veterinarian" means a veterinarian, licensed under this article, who assumes responsibility for the professional care given to an animal by a person authorized by this article to work under his or her general or indirect supervision.

(u) "Veterinarian" means a person who is licensed to practice veterinary medicine under the provisions of this article.

(v) "Veterinary assistant" means a person who has not met the requirements for becoming a registered veterinary technician. The duties and tasks of a veterinary assistant are instructed from and directly supervised by a licensed veterinarian, who is accountable for the veterinary assistant's actions. The supervising veterinarian is responsible for determining the ability and competence of the veterinary assistant to perform the directed task or procedure.

(w) "Veterinarian-client-patient relationship" means a relationship between a veterinarian, a client and a patient, and exists when:

(1) A veterinarian assumes responsibility for medical judgments regarding the health of an animal and the client who is the owner or other caretaker of the animal agrees to follow the veterinarian's instructions; or

(2) A veterinarian, through personal examination of an animal or a representative sample of a herd or flock, obtains sufficient information to make at least a general or preliminary diagnosis of the medical condition of the animal, herd or flock, which diagnosis is expanded through medically appropriate visits to the premises where the animal, herd or flock is kept.

§30-10-4. Board of Veterinary Medicine.

(a) The West Virginia Board of Veterinary Medicine is continued. The members of the board in office on July 1, 2010, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) Prior to July 1, 2010, the Governor, by and with the advice and consent of the Senate, shall appoint:

(1) A registered veterinary technician for a term of five years; and

(2) A licensed veterinarian for a term of four years.

(c) Commencing July 1, 2010, the board shall consist of the following nine members, appointed by the Governor by and with the advice and consent of the Senate:

(1) Six members licensed to practice veterinary medicine in this state;

(2) One member registered to practice veterinary technology in this state; and

(3) Two citizen members, who are not licensed, registered, certified or permitted under the provisions of this article, and who do not perform any services related to the practice of the professions regulated under the provisions of this article.

(d) After the initial appointment term, the appointment term is five years. A member may not serve more than two consecutive terms. A member who has served two consecutive full terms may not be reappointed for at least one year after completion of his or her second full term. A member may continue to serve until his or her successor has been appointed and qualified.

(e) Each licensed or registered member of the board, at the time of his or her appointment, must have held a license or registration in this state for a period of not less than three years immediately preceding the appointment.

(f) Each member of the board must be a resident of this state during the appointment term.

(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(h) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(i) A licensed or registered member of the board immediately and automatically forfeits membership to the board if his or her license or registration to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson and one member as secretary-treasurer who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) A veterinary technician member may not be employed by a veterinarian on the board.

(o) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of three members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-10-5. Powers and duties of the board.

The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law, including:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for a license, permit, certificate and registration;

(3) Establish procedures for submitting, approving and rejecting applications for a license, permit, certificate and registration;

(4) Determine the qualifications of any applicant for a license, permit, certificate and registration;

(5) Establish the fees charged under the provisions of this article;

(6) Issue, renew, deny, suspend, revoke or reinstate a license, permit, certificate and registration;

(7) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license, certificate and registration;

(8) Determine the passing grade for the examinations;

(9) Contract with third parties to administer the examinations required under the provisions of this article;

(10) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(11) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article;

(12) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(13) Conduct disciplinary hearings of persons regulated by the board;

(14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(18) Establish, by legislative rule, the continuing education requirements for licensees, permitees, certificate holders and registrants;

(19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(20) Sue and be sued in its official name as an agency of this state;

(21) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

(22) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-10-6. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for a license, permit, certificate and registration;

(2) Educational and experience requirements;

(3) Procedures for examinations and reexaminations;

(4) Requirements for third parties to prepare, administer or prepare and administer examinations and reexaminations;

11 (5) The passing grade on the examination;

12 (6) Standards for approval of courses;

13 (7) Establish a certified animal euthanasia technician's
14 program;

15 (8) Procedures for the issuance and renewal of a license,
16 permit, certificate and registration;

17 (9) A fee schedule;

18 (10) Continuing education requirements;

19 (11) Set standards for ethical conduct;

20 (12) Establish procedures and requirements for facility
21 inspections;

22 (13) Clarify the veterinarian-client-patient relationship;

23 (14) The procedures for denying, suspending, revoking,
24 reinstating or limiting the practice of a licensee, permittee,
25 certificate holder or registrant;

26 (15) Requirements for a revoked license, permit,
27 certificate and registration; and

28 (16) Any other rules necessary to effectuate the
29 provisions of this article.

30 (b) All of the board's rules in effect on July 1, 2010, shall
31 remain in effect until they are amended, modified, repealed
32 or replaced.

§30-10-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Veterinary Medicine Fund", which fund is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board shall retain the amounts in the special revenue account from year to year. Any compensation or expense incurred under this article is not a charge against the General Revenue Fund.

(b) The board shall deposit any amounts received as administrative fines imposed pursuant to this article into the General Revenue Fund of the State Treasury.

§30-10-8. Requirements for Veterinary License.

(a) To be eligible for a license to practice veterinary medicine under the provisions of this article, the applicant must:

(1) Be of good moral character;

(2) (A) Be a graduate of an accredited school approved by the board; or

(B) Be a graduate of a foreign veterinary school and hold a certificate of competence issued by a foreign veterinary graduate educational organization as approved by the board;

(3) Have passed the examinations required by the board;

(4) Be at least eighteen years of age;

(5) Be a citizen of the United States or be eligible for employment in the United States;

(6) Not have been convicted of a crime involving moral turpitude;

(7) Not have been convicted of a felony under the laws of any jurisdiction within five years preceding the date of application for licensure which conviction remains unreversed; and

(8) Not have been convicted of a misdemeanor or a felony under the laws of any jurisdiction at any time if the offense for which the applicant was convicted related to the practice of veterinary medicine or animal abuse or neglect.

(b) A person seeking a license under the provisions of this article shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) An applicant from another jurisdiction shall comply with all the requirements of this article.

(d) A license to practice veterinary medicine issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article and may be renewed under this article.

(e) An application for a license to practice veterinary medicine submitted to the board prior to July 1, 2010, shall be considered in conformity with the licensing provisions of this article and the rules promulgated thereunder in effect at the time of the submission of the application.

§30-10-9. Scope of Practice for a Licensed Veterinarian.

A person licensed to practice veterinary medicine may do the following:

(a) Prescribe or administer any drug, medicine, treatment, method or practice for an animal.

(b) Perform any operation or manipulation on or apply any apparatus or appliance to an animal.

(c) Give instruction or demonstration for the cure, amelioration, correction or reduction or modification of an animal condition, disease, deformity, defect, wound or injury.

(d) Diagnose or prognosticate an animal condition, disease, deformity, defect, wound or injury for hire, fee, reward or compensation that is directly or indirectly promised, offered, expected, received or accepted.

(e) Prescribe or administer any legally authorized drug, medicine, treatment, method or practice, perform any operation or manipulation, or apply any apparatus or appliance for the cure, amelioration, correction or modification of an animal condition, disease, deformity, defect, wound or injury for hire, fee, compensation or reward that is directly or indirectly promised, offered, expected, received or accepted.

§30-10-10. Requirements for a registered veterinary technician.

(a) To be eligible for a registration to practice veterinary technology under the provisions of this article, the applicant must:

(1) Be of good moral character;

(2) Have a degree in veterinary technology from an accredited school, approved by the board;

(3) Have passed the examinations required by the board;

(4) Be at least eighteen years of age;

(5) Be a citizen of the United States or be eligible for employment in the United States;

11 (6) Not have been convicted of a crime involving moral
12 turpitude;

13 (7) Not have been convicted of a felony under the laws of
14 any jurisdiction within five years preceding the date of
15 application for registration which conviction remains
16 unreversed; and

17 (8) Not have been convicted of a misdemeanor or a
18 felony under the laws of any jurisdiction at any time if the
19 offense for which the applicant was convicted related to the
20 practice of veterinary technology or animal abuse or neglect.

21 (b) A person seeking registration under the provisions of
22 this article shall submit an application on a form prescribed
23 by the board and pay all applicable fees.

24 (c) A person registered to practice veterinary technology
25 issued by the board prior to July 1, 2010, shall for all
26 purposes be considered registered under this article and may
27 renew pursuant to the provisions of this article.

§30-10-11. Scope of practice for registered veterinary technician.

1 (a) A registered veterinary technician may do the
2 following under general supervision:

3 (1) Administer anesthesia, including induction, intravenous
4 sedation, and maintenance and recovery from anesthesia;

5 (2) Perform dental prophylaxis;

6 (3) Establish open airways;

7 (4) Administer resuscitative oxygen procedures;

8 (5) Administer resuscitative drugs, in the event of cardiac
9 arrest;

10 (6) Administer immunizations that are not required by
11 law to be administered by a licensed veterinarian;

12 (7) Prepare or supervise the preparation of patients for
13 surgery;

14 (8) Assist the veterinarian in immunologic, diagnostic,
15 medical, chemotherapeutic and surgical procedures; and

16 (9) Perform external suturing.

17 (b) A registered veterinary technician may do the
18 following under either general or indirect supervision:

19 (1) Perform diagnostic imaging;

20 (2) Perform intravenous catheterization;

21 (3) Administer and apply medications and treatments by
22 oral intramuscular, intravenous and subcutaneous routes;

23 (4) Apply bandages;

24 (5) Perform cardiac and respiratory monitoring;

25 (6) Perform appropriate procedures to control bleeding;

26 (7) Apply temporary splints or immobilizing bandages;

27 (8) Perform ear flushing;

28 (9) Collect specimens; and

29 (10) Perform laboratory procedures.

(c) A veterinary technician may, without supervision, use emergency treatment procedures when an animal has been placed in a life threatening condition and immediate treatment is necessary to sustain the animal's life. The registered veterinary technician shall immediately take steps to secure the general supervision of a veterinarian.

§30-10-12. Requirements to be a certified animal euthanasia technician.

(a) To be eligible to be a certified animal euthanasia technician a person must:

(1) Apply at least thirty days prior to the date the next written examinations are scheduled, using a form prescribed by the board;

(2) Have a high school diploma or GED;

(3) Pay application and examination fees;

(4) Complete the certified animal euthanasia technician's program established by the board;

(5) Pass the written and practical skills examinations;

(6) Pass the prescribed background check; and

(7) Complete all the other requirements established by the board.

(b) A certified animal euthanasia technician may practice animal euthanasia at a legally operated animal control facility.

(c) A person certified as an animal euthanasia technician by the board prior to July 1, 2010, shall for all purposes be

19 considered certified under this article and may renew
20 pursuant to the provisions of this article.

§30-10-13. Requirements for certified animal euthanasia technicians program.

1 (a) The board shall create a certified animal euthanasia
2 technician's program. The board shall design this program
3 to teach applicants for certification record keeping and the
4 legal, safety and practical information needed to become a
5 certified animal euthanasia technician.

6 (b) (1) The board shall administer written examinations
7 to an applicant for certification. The written examinations
8 shall test the applicant's knowledge of the following:

9 (A) Animal restraint;

10 (B) Drug enforcement agency regulations;

11 (C) Record keeping requirements for controlled
12 substances;

13 (D) Handling, inventory, security and proper storage of
14 euthanasia drugs, solutions and syringes;

15 (E) The certification process;

16 (F) Legal requirements;

17 (G) Stress management;

18 (H) Approved animal euthanasia drug usage;

19 (I) Jurisprudence; and

20 (J) Other subject areas specified by the board in a
21 legislative rule.

22 (2) The applicant shall pass the written examinations with
23 a minimum correct score, as determined by the board, in
24 order to be eligible to take the practical skills examination
25 provided in subsection (c) of this section.

26 (c) In addition to the written examinations provided
27 under subsection (b) of this section, the board shall
28 administer a practical skills examination to an applicant who
29 has successfully passed the written examinations. The board
30 shall conduct the practical skills examination in a manner that
31 tests an applicant's ability to properly restrain an animal,
32 measure a correct dosage of euthanasia solution, locate an
33 injection site and perform an injection. In order to pass the
34 practical skills examination, an applicant shall exhibit to the
35 board that he or she can locate an injection site and perform
36 an injection and also perform euthanasia correctly and
37 humanely.

38 (d) An applicant who successfully passes the written
39 examinations and the practical skills examination required by
40 this section shall sign a form authorizing the board to make
41 inquiries through the United States Department of Justice, or
42 any other legal jurisdiction or entity, for the purpose of
43 determining the character and reputation of the applicant and
44 other matters relating to the certification of the applicant.

§30-10-14. Scope of practice for an animal euthanasia technician.

1 (a) A certified animal euthanasia technician may
2 euthanize animals assigned to the care of an animal control
3 facility.

4 (b) A certified animal euthanasia technician shall practice
5 euthanasia within the limitations imposed by this article and
6 rules promulgated by the board under this article.

7 (c) A certified animal euthanasia technician may not
8 practice or offer to practice his or her profession outside the
9 direct authority of the animal control facility which employs
10 him or her or otherwise contracts for his or her services.

11 (d) A certified animal euthanasia technician is not
12 qualified and may not indicate that he or she is qualified to
13 act in any capacity relative to animals beyond his or her
14 specified and regulated authority to euthanize animals at the
15 instruction of the animal control facility by which he or she
16 is employed.

17 (e) Annually, before January 15, a certified animal
18 euthanasia technician shall report to the board the number of
19 animals euthanized at his or her facility during the previous
20 calendar year.

§30-10-15. Renewal requirements.

1 (a) All persons regulated by the article shall annually or
2 biennially before January 1, renew his or her license,
3 registration or certification by completing a form prescribed
4 by the board, paying all applicable fees and submitting any
5 other information required by the board.

6 (b) At least thirty days prior to January 1, the board shall
7 mail to every person regulated by the article an application
8 for renewal.

9 (c) The board shall charge a fee for each renewal and a
10 late fee for any renewal not properly completed and received
11 with the appropriate fee by the due date.

12 (d) The board shall require as a condition of renewal that
13 each licensee, registrant and certificate holder complete
14 continuing education.

15 (e) The board may deny an application for renewal for
16 any reason which would justify the denial of an original
17 application.

18 (f) The board may authorize the waiving of the renewal
19 fee of a licensed veterinarian or registered veterinarian
20 technician during the period when he or she is on active duty
21 with any branch of the armed services or the public health
22 service of the United States or a declared emergency.

23 (g) After July 1, 2010, a previously certified animal
24 euthanasia technician may renew his or her certification
25 without having obtained a high school degree or GED.

§30-10-16. Temporary permits for a veterinarian.

1 (a) Upon completion of an application and payment of
2 the applicable fees, the board may issue a temporary permit
3 to a person to practice veterinary medicine in this state who
4 has completed the educational requirements set out in this
5 article, is waiting to take the state examination, and is
6 working under a supervising veterinarian.

7 (b) The temporary permit is valid for a period not to
8 exceed the next scheduled examination date first held
9 following the issuance of the temporary permit and expires
10 the day after the board gives written notice to the permitee of
11 the results.

12 (c) A temporary permit may be revoked by a majority
13 vote of the board without a hearing.

§30-10-17. Exemptions from article.

1 The following persons are exempt from licensing under
2 the provisions of this article:

(a) An employee of the federal government performing his or her official duties, as defined by the employing agency;

(b) A student of a veterinary school working under the direct supervision of a licensed veterinarian;

(c) A person advising with respect to or performing acts which the board has prescribed by legislative rule as accepted livestock management practices;

(d) The owner of an animal, the owner's employees, or persons assisting the owner without any fee or compensation, caring for and treating the animal, except where the ownership of the animal was transferred for the purpose of circumventing the provisions of this article;

(e) A member of the faculty of a veterinary school performing his or her regular duties and functions, including lecturing, giving instructions or demonstrations, at a veterinary school or in connection with a board approved continuing education course or seminar;

(f) A person selling or applying a pesticide, insecticide or herbicide;

(g) A person engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(h) A person engaging in bona fide scientific research in consultation with a licensed veterinarian in this state;

(i) A person treating or relieving a living animal in the case of an emergency for no fee or other compensation;

(j) A person who disposes of the carcass of a dead animal; and

(k) Veterinary assistants acting under the general supervision of a licensed veterinarian.

§30-10-18. Display of license, permit, registration and certificate.

(a) The board shall prescribe the form for a license, permit, registration and certificate and may issue a duplicate upon payment of a fee.

(b) Any person regulated by this article shall conspicuously display his or her license, permit, registration or certification at his or her principal business location.

§30-10-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee, registrant or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, permittee, registrant or certificate holder has violated any provision of this article.

(d) Upon a finding that probable cause exists that the licensee, permittee, registrant or certificate holder has violated this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, permit, registration or certificate or the imposition of sanctions against the licensee, permittee,

registrant or certificate holder. The hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by this article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny, refuse to renew, suspend or revoke the license, permit, registration or certificate of, impose probationary conditions upon or take disciplinary action against, any licensee, permittee, registrant or certificate holder for any of the following reasons:

(1) Obtaining a license, permit, registration or certificate by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct;

(4) Intentional violation of this article or lawful order;

(5) Having had a license or other authorization to practice revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization refused, revoked or suspended by the proper authorities of another jurisdiction, irrespective of intervening appeals and stays; or

(6) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 a day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee, permittee, registrant or certificate holder to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-10-20. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, the administrative law judge shall prepare a proposed written order containing findings of fact and conclusions of law at the conclusion of a hearing. The proposed order may contain proposed disciplinary actions if the board so directs.

The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, permittee, registrant or certificate holder has violated this article, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-10-21. Judicial review; appeal to Supreme Court of Appeals.

Any licensee, permittee, registrant or certificate holder adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-10-22. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated this article, the board may bring its information to the attention of an appropriate law-enforcement official who may cause criminal proceedings to be brought.

(b) Any person violating a provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than six months, or both fined and confined.

§30-10-23. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 154

**(Com. Sub. for S. B. 618 -
By Senator Foster)**

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of the Code of West Virginia, 1931, as amended, all relating to osteopathic physician assistants; updating definitions; clarifying use of the term "license" in lieu of "certificate"; modifying the authorization to prescribe drugs; modifying the classes of pharmaceuticals that may be prescribed by an osteopathic physician assistant; changing the amount of certain drugs that may be prescribed; and authorizing fees to be set by legislative rule.

Be it enacted by the Legislature of West Virginia:

That §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; licensure; temporary licensure; renewal of license; job description required; revocation or suspension of license; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of "osteopathic physician assistant"; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.
§30-14A-2. Approval and licensure by board of osteopathy.
§30-14A-3. Rulemaking.
§30-14A-4. Limitation on scope of duties.
§30-14A-5. Special volunteer osteopathic physician assistant license; civil immunity for voluntary services rendered to indigents.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; licensure; temporary licensure; renewal of license; job description required; revocation or suspension of license; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of "osteopathic physician assistant"; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Approved program" means an educational program
3 for osteopathic physician assistants approved and accredited by
4 the Committee on Allied Health Education and Accreditation
5 or its successor.

6 (2) "Board" means the Board of Osteopathy established
7 under the provisions of article fourteen, chapter thirty of this
8 code.

9 (3) "Direct supervision" means the presence of the
10 supervising physician at the site where the osteopathic
11 physician assistant performs medical duties.

12 (4) "Health care facility" means any licensed hospital,
13 nursing home, extended care facility, state health or mental
14 institution, clinic or physician's office.

15 (5) "License" means a certificate issued to an osteopathic
16 physician assistant who has passed the examination for a
17 primary care or surgery physician assistant administered by the
18 National Board of Medical Examiners on behalf of the
19 National Commission on Certification of Physician Assistants.
20 All osteopathic physician assistants holding valid certificates
21 issued by the board prior to March 31, 2010, shall be
22 considered to be licensed under the provisions of this article:
23 *Provided*, That a person holding a certificate issued prior to
24 March 31, 2010, must renew the license pursuant to the
25 provisions of this article.

26 (6) "Osteopathic physician assistant" means an assistant to
27 an osteopathic physician who is a graduate of an approved
28 program of instruction in primary care or surgery, has passed
29 the national certification examination and is qualified to
30 perform direct patient care services under the supervision of an
31 osteopathic physician.

32 (7) "Supervising physician" means a doctor of osteopathy
33 permanently licensed in this state who assumes legal and
34 supervising responsibility for the work or training of any
35 osteopathic physician assistant under his or her supervision.

36 (b) The board shall propose emergency and legislative
37 rules for legislative approval pursuant to the provisions of
38 article three, chapter twenty-nine-a of this code, governing the
39 extent to which osteopathic physician assistants may function
40 in this state. The rules shall provide that:

41 (1) The osteopathic physician assistant is limited to the
42 performance of those services for which he or she is trained;

43 (2) The osteopathic physician assistant performs only
44 under the supervision and control of an osteopathic physician
45 permanently licensed in this state, but such supervision and
46 control does not require the personal presence of the
47 supervising physician at the place or places where services are
48 rendered if the osteopathic physician assistant's normal place
49 of employment is on the premises of the supervising physician.
50 The supervising physician may send the osteopathic physician
51 assistant off the premises to perform duties under his or her
52 direction, but a separate place of work for the osteopathic
53 physician assistant may not be established; and

54 (3) The board may allow the osteopathic physician
55 assistant to perform those procedures and examinations and in
56 the case of authorized osteopathic physician assistants to
57 prescribe at the direction of his or her supervising physician in
58 accordance with subsections (p) and (q) of this section those
59 categories of drugs submitted to it in the job description
60 required by subsection (f) of this section.

61 (c) The board shall compile and publish an annual report
62 that includes a list of currently licensed osteopathic physician
63 assistants and their employers and location in the state.

64 (d) The board shall license as an osteopathic physician
65 assistant any person who files an application together with a
66 proposed job description and furnishes satisfactory evidence
67 that he or she has met the following standards:

68 (1) Is a graduate of an approved program of instruction in
69 primary health care or surgery;

70 (2) Has passed the examination for a primary care or
71 surgery physician assistant administered by the National Board

of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants; and

(3) Is of good moral character.

(e) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with this section, for an osteopathic physician assistant license, the board may issue to the applicant a temporary license allowing the applicant to function as an osteopathic physician assistant for the period of one year. The temporary license may be renewed for one additional year upon the request of the supervising physician. An osteopathic physician assistant who has not been certified as such by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants will be restricted to work under the direct supervision of the supervising physician.

(f) Any osteopathic physician applying to the board to supervise an osteopathic physician assistant shall provide a job description that sets forth the range of medical services to be provided by the assistant. Before an osteopathic physician assistant can be employed or otherwise use his or her skills, the supervising physician must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving such person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

(g) The supervising physician is responsible for observing, directing and evaluating the work records and practices of each osteopathic physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with an osteopathic physician assistant within ten days of his or her termination. The legal responsibility for any osteopathic

105 physician assistant remains with the supervising physician at
106 all times, including occasions when the assistant, under his or
107 her direction and supervision, aids in the care and treatment of
108 a patient in a health care facility. In his or her absence, a
109 supervising physician must designate an alternate supervising
110 physician; however, the legal responsibility remains with the
111 supervising physician at all times. A health care facility is not
112 legally responsible for the actions or omissions of an
113 osteopathic physician assistant unless the osteopathic
114 physician assistant is an employee of the facility.

115 (h) The acts or omissions of an osteopathic physician
116 assistant employed by health care facilities providing inpatient
117 services are the legal responsibility of the facilities.
118 Osteopathic physician assistants employed by such facilities in
119 staff positions shall be supervised by a permanently licensed
120 physician.

121 (i) A health care facility shall report in writing to the board
122 within sixty days after the completion of the facility's formal
123 disciplinary procedure, and also after the commencement, and
124 again after the conclusion, of any resulting legal action, the
125 name of any osteopathic physician assistant practicing in the
126 facility whose privileges at the facility have been revoked,
127 restricted, reduced or terminated for any cause including
128 resignation, together with all pertinent information relating to
129 such action. The health care facility shall also report any other
130 formal disciplinary action taken against any osteopathic
131 physician assistant by the facility relating to professional
132 ethics, medical incompetence, medical malpractice, moral
133 turpitude or drug or alcohol abuse. Temporary suspension for
134 failure to maintain records on a timely basis or failure to attend
135 staff or section meetings need not be reported.

136 (j) When functioning as an osteopathic physician assistant,
137 the osteopathic physician assistant shall wear a name tag that
138 identifies him or her as a physician assistant.

(k) (1) A supervising physician shall not supervise at any time more than three osteopathic physician assistants, except that a physician may supervise up to four hospital-employed osteopathic physician assistants: *Provided,* That an alternative supervisor has been designated for each.

(2) An osteopathic physician assistant shall not perform any service that his or her supervising physician is not qualified to perform.

(3) An osteopathic physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided in this section.

(4) The provisions of this section do not authorize an osteopathic physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, registered nurses, licensed practical nurses, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(l) An application for license or renewal of license shall be accompanied by payment of a fee which shall be established by legislative rule of the Board of Osteopathy pursuant to the provisions of article three, chapter twenty-nine-a of this code.

(m) As a condition of renewal of an osteopathic physician assistant license, each osteopathic physician assistant shall provide written documentation satisfactory to the board of participation in and successful completion of continuing education in courses approved by the board of osteopathy for the purposes of continuing education of osteopathic physician assistants. The osteopathy board shall propose legislative rules for minimum continuing hours necessary for the renewal of a license. These rules shall provide for minimum hours equal to or more than the hours necessary for national certification.

171 Notwithstanding any provision of this chapter to the contrary,
172 failure to timely submit the required written documentation
173 shall result in the automatic suspension of any license as an
174 osteopathic physician assistant until such time as the written
175 documentation is submitted to and approved by the board.

176 (n) It is unlawful for any person who is not licensed by the
177 board as an osteopathic physician assistant to use the title of
178 "osteopathic physician assistant" or to represent to any other
179 person that he or she is an osteopathic physician assistant. Any
180 person who violates the provisions of this subsection is guilty
181 of a misdemeanor and, upon conviction thereof, shall be fined
182 not more than $2,000.

183 (o) It is unlawful for any osteopathic physician assistant to
184 represent to any person that he or she is a physician. Any
185 person who violates the provisions of this subsection is guilty
186 of a felony, and, upon conviction thereof, shall be imprisoned
187 in a state correctional facility for not less than one, nor more
188 than two years, or be fined not more than $2,000, or both fined
189 and imprisoned.

190 (p) An osteopathic physician assistant may write or sign
191 prescriptions or transmit prescriptions by word of mouth,
192 telephone or other means of communication at the direction of
193 his or her supervising physician. The board shall propose rules
194 for legislative approval in accordance with the provisions of
195 article three, chapter twenty-nine-a of this code governing the
196 eligibility and extent to which such an osteopathic physician
197 assistant may prescribe at the direction of the supervising
198 physician. The rules shall provide for a state formulary
199 classifying pharmacologic categories of drugs which may be
200 prescribed by such an osteopathic physician assistant. In
201 classifying such pharmacologic categories, those categories of
202 drugs which shall be excluded shall include, but not be limited
203 to, Schedules I and II of the Uniform Controlled Substances

204 Act, anticoagulants, antineoplastics, radiopharmaceuticals,
205 general anesthetics and radiographic contrast materials. Drugs
206 listed under Schedule III are limited to a seventy-two hour
207 supply without refill. The rules shall provide that all
208 pharmacological categories of drugs to be prescribed by an
209 osteopathic physician assistant shall be listed in each job
210 description submitted to the board as required in this section.
211 The rules shall provide the maximum dosage an osteopathic
212 physician assistant may prescribe.

213 (q) The rules shall also provide that to be eligible for such
214 prescription privileges, an osteopathic physician assistant must
215 submit an application to the board for such privileges. The
216 rules shall also provide that an osteopathic physician assistant
217 shall have performed patient care services for a minimum of
218 two years immediately preceding the submission to the board
219 of said application for prescription privileges and shall have
220 successfully completed an accredited course of instruction in
221 clinical pharmacology approved by the board. The rules shall
222 also provide that to maintain prescription privileges, an
223 osteopathic physician assistant shall continue to maintain
224 national certification as an osteopathic physician assistant, and
225 in meeting such national certification requirements shall
226 complete a minimum of ten hours of continuing education in
227 rational drug therapy in each licensing period. Nothing in this
228 subsection may be construed to permit an osteopathic
229 physician assistant to independently prescribe or dispense
230 drugs.

§30-14A-2. Approval and licensure by board of osteopathy.

1 Approval of a job description and establishment of
2 qualifications for employment as an assistant to an osteopathic
3 physician and surgeon must be obtained from the Board of
4 Osteopathy. The Board of Osteopathy shall license each
5 qualified applicant for employment as an assistant to an

6 osteopathic physician and surgeon upon submission of a job
7 description, and shall provide for biennial renewal of the
8 license. The board has the power to revoke or suspend any
9 license of an assistant to an osteopathic physician and surgeon,
10 for cause, after having given the person an opportunity to be
11 heard in the manner provided by sections eight and nine,
12 article one of this chapter.

§30-14A-3. Rulemaking.

1 (a) The Board of Osteopathy shall propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, to implement the
4 provisions of this article, including:

5 (1) Establishing fees; and

6 (2) Any other rules necessary to effectuate the provisions of
7 this article.

8 (b) The fees in effect on the effective date of the
9 reenactment of this section during the regular session of the
10 Legislature in 2010 will remain in effect until modified by
11 legislative rule.

§30-14A-4. Limitation on scope of duties.

1 Assistants to osteopathic physicians and surgeons may not
2 sign prescriptions or perform any service which his or her
3 employing osteopathic physician and surgeon is not qualified
4 to perform.

§30-14A-5. Special volunteer osteopathic physician assistant license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer osteopathic physician assistant license for osteopathic physician assistants retired or retiring from the active practice of osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer osteopathic physician assistant license shall be issued by the West Virginia Board of Osteopathy to osteopathic physician assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for and the remainder of the licensing period and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the osteopathic physician assistant's acknowledgment that:

(1) The osteopathic physician assistant's practice under the special volunteer osteopathic physician assistant license will be exclusively devoted to providing osteopathic care to needy and indigent persons in West Virginia;

(2) The osteopathic physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any osteopathic services rendered under the special volunteer osteopathic physician assistant license;

(3) The osteopathic physician assistant will supply any supporting documentation that the board may reasonably require; and

31 (4) The osteopathic physician assistant agrees to continue
32 to participate in continuing education as required by the board
33 for a special volunteer osteopathic physician assistant license.

34 (b) Any osteopathic physician assistant who renders any
35 osteopathic service to indigent and needy patients of a clinic
36 organized, in whole or in part, for the delivery of health care
37 services without charge under a special volunteer osteopathic
38 physician assistant license authorized under subsection (a) of
39 this section without payment or compensation or the
40 expectation or promise of payment or compensation, is
41 immune from liability for any civil action arising out of any act
42 or omission resulting from the rendering of the osteopathic
43 service at the clinic unless the act or omission was the result of
44 the osteopathic physician assistant's gross negligence or willful
45 misconduct. In order for the immunity under this subsection
46 to apply, there must be a written agreement between the
47 osteopathic physician assistant and the clinic pursuant to which
48 the osteopathic physician assistant will provide voluntary
49 uncompensated medical services under the control of the clinic
50 to patients of the clinic before the rendering of any services by
51 the osteopathic physician assistant at the clinic: *Provided,* That
52 any clinic entering into such written agreement is required to
53 maintain liability coverage of not less than $1 million per
54 occurrence.

55 (c) Notwithstanding the provisions of subsection (b) of this
56 section, a clinic organized, in whole or in part, for the delivery
57 of health care services without charge is not relieved from
58 imputed liability for the negligent acts of an osteopathic
59 physician assistant rendering voluntary medical services at or
60 for the clinic under a special volunteer osteopathic physician
61 assistant license authorized under subsection (a) of this section.

62 (d) For purposes of this section, "otherwise eligible for
63 licensure" means the satisfaction of all the requirements for

licensure set out in this article and in the legislative rules promulgated thereunder. The term does not include the fee requirement set out in this article or legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer osteopathic physician assistant license to any osteopathic physician assistant whose certificate, license or other authorization to practice is or has been subject to any disciplinary action, or to any osteopathic physician assistant who has surrendered an osteopathic physician assistant certificate, license or other authorization to practice, or caused such certificate, license or other authorization to practice to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her certificate, license or other authorization to practice, or who has elected to place an osteopathic physician assistant certificate, license or other authorization to practice in inactive status in lieu of having a complaint initiated or other action taken against his or her certificate, license or other authorization to practice, or who has been denied a certificate, license or other authorization to practice as an osteopathic physician assistant in any jurisdiction.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any osteopathic physician assistant covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an osteopathic physician assistant who holds a special volunteer osteopathic physician assistant license.

CHAPTER 155

(H. B. 4142 - By Delegates Morgan, Stephens, Swartzmiller, Martin, Hartman, Manypenny and Staggers)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §30-17-1, §30-17-2, §30-17-3, §30-17-4, §30-17-5, §30-17-6, §30-17-7, §30-17-8, §30-17-9, §30-17-10, §30-17-11, §30-17-12, §30-17-13, §30-17-14, §30-17-15 and §30-17-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §30-17-17, §30-17-18 and §30-17-19, all relating to the State Board of Sanitarians; prohibiting the practice of environmental health science and public health sanitation without a license, certification or permit; updating definitions; changing the board composition; clarifying the powers and duties of the board; clarifying rule-making authority; authorizing emergence rules; continuing a special revenue account; establishing license, permit and certificate requirements; providing exemptions from licensure; licensing requirements for persons licensed in another state; establishing renewal requirements; requiring display of license, certification and permit; setting grounds for disciplinary actions; establishing specific disciplinary actions; providing procedures for investigation of complaints, judicial review, appeals of decisions, hearings, notice and civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-17-1, §30-17-2, §30-17-3, §30-17-4, §30-17-5, §30-17-6, §30-17-7, §30-17-8, §30-17-9, §30-17-10, 30-17-11, §30-17-12, §30-17-13, §30-17-14, §30-17-15 and §30-17-16 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 §30-17-17, §30-17-18 and §30-17-19, all to read as follows:

ARTICLE 17. SANITARIANS.

§30-17-1. Unlawful acts.
§30-17-2. Applicable law.
§30-17-3. Definitions.
§30-17-4. State Board of Sanitarians.
§30-17-5. Powers and duties of the board.
§30-17-6. Rulemaking.
§30-17-7. Fees; special revenue account; administrative fines.
§30-17-8. Qualifications for licensure as a registered sanitarian.
§30-17-9. Qualifications for certificate as a sanitarian.
§30-17-10. Qualifications for permit as a sanitarian-in-training.
§30-17-11. Persons exempted from licensure.
§30-17-12. License from another state.
§30-17-13. Renewal requirements.
§30-17-14. Display of license, permit or certificate.
§30-17-15. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-17-16. Procedures for hearing; right of appeal.
§30-17-17. Judicial review; appeal to Supreme Court of Appeals.
§30-17-18. Criminal proceedings; penalties.
§30-17-19. Single act evidence of practice.

§30-17-1. Unlawful acts.

1 It is unlawful for any person to practice or offer to practice
2 environmental health science and public health sanitation in
3 this state without being licensed, certified or permitted under
4 the provisions of this article, or to advertise or use any title or
5 description tending to convey the impression that the person is
6 a registered sanitarian, sanitarian or sanitarian-in-training
7 unless he or she has been duly authorized under the provisions
8 of this article, and the license, certification or permit has not
9 expired or been suspended or revoked.

§30-17-2. Applicable law.

The practice of environmental health science and public health sanitation, and the board are subject to the provisions of article one of this chapter, the provisions of this article and any rules promulgated hereunder.

§30-17-3. Definitions.

As used in this article, the following words and terms have the following meanings:

(a) "Board" means the State Board of Sanitarians.

(b) "Bureau" means the Bureau for Public Health.

(c) "Certificate holder" means a person holding a certification issued by the board.

(d) "Certificate" means a document issued to a sanitarian under the provisions of this article.

(e) "Environmental health science" means public health science that includes, but is not limited to, the following bodies of knowledge: air quality, food quality and protection, hazardous and toxic substances, consumer product safety, housing, institutional health and safety, community noise control, radiation protection, recreational facilities, solid and liquid waste management, vector control, drinking water quality, milk sanitation and rabies control.

(f) "License" means a document issued to a registered sanitarian under the provisions of this article.

(g) "Licensee" means a person holding a license issued by the board.

(h) "Permit" means a document issued to a sanitarian-in-training under the provisions of this article.

23 (i) "Permittee" means a person holding a permit issued by
24 the board.

25 (j) "Practice of public health sanitation" means the
26 consultation, instruction, investigation, inspection or evaluation
27 by an employee of the bureau, or a municipal or county health
28 department with the primary purpose of improving or
29 conducting administration of enforcement of state laws and
30 rules.

31 (k) "Registered sanitarian" means a person who is licensed
32 by the board and is uniquely qualified by education,
33 specialized training, experience and examination to assist in
34 the enforcement of public health sanitation laws and
35 environmental sanitation regulations, and to effectively plan,
36 organize, manage, evaluate and execute one or more of the
37 many diverse disciplines comprising the field of public health
38 sanitation.

39 (l) "Sanitarian" means a person who is certified by the
40 board and is uniquely qualified by education in the arts and
41 sciences, specialized training and credible field experience to
42 assist in the enforcement of public health sanitation laws and
43 environmental sanitation regulations, and to effectively plan,
44 organize, manage, evaluate and execute one or more of the
45 many diverse disciplines comprising the field of public health
46 sanitation.

47 (m) "Sanitarian-in-training" means a person who is
48 permitted by the board and possesses the necessary educational
49 qualifications for certificate as a sanitarian, but who has not
50 completed the experience requirements in the fields of public
51 health sanitation and environmental health science as required
52 for certificate.

§30-17-4. State Board of Sanitarians.

(a) The Board of Registration for Sanitarians is continued and commencing July 1, 2010, shall be known as the State Board of Sanitarians. Any member of the board, except one registered sanitarian, in office on July 1, 2010, may continue to serve until his or her successor has been appointed and qualified.

(b) Prior to July 1, 2010, the Governor, by and with the advice and consent of the Senate, shall appoint one certified sanitarian to replace one registered sanitarian.

(c) Commencing July 1, 2010, the board shall consist of the following seven voting members with staggered terms and 1 non-voting member:

(1) The Commissioner of the Bureau of Public Health, or his or her designee, who is a nonvoting member;

(2) Four members who are registered sanitarians, who are voting members;

(3) One member who has a certificate as a sanitarian at the time of the appointment, who is a voting member: *Provided*, That if the member becomes a registered sanitarian during his or her appointment term, then the person may not be reappointed as the certified sanitarian member, but may be reappointed as a registered sanitarian member; and

(4) Two citizen members, who are not licensed, certified or permitted under the provisions of this article, and who do not perform any services related to the practice of the professions regulated under the provisions of this article, who are voting members.

(d) Each voting member must be appointed by the Governor, by and with the advice and consent of the Senate,

and must be a resident of this state during the appointment term.

(e) The term of each voting board member is five years.

(f) No voting member may serve more than two consecutive full terms and any voting member having served two full terms may not be appointed for one year after completion of his or her second full term. A voting member shall continue to serve until his or her successor has been appointed and qualified.

(g) Each licensed or certified member shall have been engaged in the practice of environmental health science or public health sanitation for at least five years immediately preceding the appointment.

(h) Each licensed or certified member shall maintain an active license or certificate with the board during his or her term.

(i) The Governor may remove any voting member from the board for neglect of duty, incompetency or official misconduct.

(j) A licensed or certified member of the board immediately and automatically forfeits membership to the board if his or her license or certificate to practice is suspended or revoked.

(k) A voting member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(l) The board shall designate one of its members as chairperson who serves at the will of the board.

(m) Each voting member of the board is entitled to receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

(n) A majority of the members of the board shall constitute a quorum.

(o) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson, or upon the written request of two members, at such time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a voting member of the board, each voting member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-17-5. Powers and duties of the board.

The board has all the powers and duties set forth in article one of this chapter and also the following powers and duties:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Set the requirements for a license, permit and certificate;

(3) Establish procedures for submitting, approving and rejecting applications for a license, permit and certificate;

(4) Determine the qualifications of any applicant for a license, permit and certificate;

(5) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;

(6) Determine the passing grade for the examinations;

(7) Contract with third parties to administer the examinations required under the provisions of this article;

(8) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article;

(10) Define the fees charged under the provisions of this article;

(11) Issue, renew, deny, suspend, revoke or reinstate a license, permit and certificate;

(12) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(13) Conduct disciplinary hearings of persons regulated by the board;

(14) Determine disciplinary action and issue orders;

(15) Institute appropriate legal action for the enforcement of the provisions of this article;

(16) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(17) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(18) Establish the continuing education requirements for licensees, permittees and certificate holders;

(19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(20) Sue and be sued in its official name as an agency of this state;

(21) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

(22) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-17-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for a license, permit or certificate;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational, experience and training requirements, and the passing grade on the examination;

(5) Standards for approval of courses;

(6) Procedures for the issuance and renewal of a license, permit or certificate;

(7) A fee schedule;

(8) The continuing education requirements;

(9) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee, permittee or certificate holder;

(10) Requirements for an inactive or revoked license, permit or certificate; and

(11) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board's rules in effect on July 1, 2010, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

(c) The board is authorized to promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, to set fees for the issuance and renewal of licenses, certificates and permits for an eighteen month period commencing July 1, 2010, and ending December 31, 2011.

§30-17-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Sanitarians Operating Fund", which fund is continued. The fund shall be used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board shall retain the amounts in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as fines imposed, pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

§30-17-8. Qualifications for licensure as a registered sanitarian.

(a) To be eligible to be licensed as a registered sanitarian, the applicant must:

(1) Be of good moral character;

(2) Have a bachelor's or higher degree from an accredited college or university;

(3) Successfully complete a sanitarian's training course of a minimum of three hundred hours, as approved by the board;

(4) Have at least two years of experience in the field of public health sanitation and environmental health science; and

(5) Pass an examination, as required by the board.

(b) An applicant may substitute a successfully completed master's or higher degree in public health, environmental science, sanitary science, community hygiene or other science field, as approved by the board, for one of the required years of experience.

(c) A registration issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a registration issued prior to July 1, 2010, must renew pursuant to the provisions of this article.

§30-17-9. Qualifications for certificate as a sanitarian.

(a) To be eligible to be certified as a sanitarian, the applicant must:

(1) Be of good moral character;

(2) Have a bachelor's or higher degree from an accredited college or university;

(3) Successfully complete a sanitarian's training course of a minimum of three hundred hours, as approved by the board; and

(4) Have at least two years of experience in the field of public health sanitation and environmental health science.

(b) An applicant may substitute a successfully completed master's or higher degree in public health, environmental science, sanitary science, community hygiene or other science field as approved by the board for one of the required years of experience.

(c) A person who is registered as a sanitarian-in-training by the board and on or before July 1, 2010, has two or more years of experience in the field of public health sanitation and environmental health science, as approved by the board, shall for all purposes be considered certified under this article: *Provided*, That such a person must renew pursuant to the provisions of this article.

§30-17-10. Qualifications for permit as a sanitarian-in-training.

(a) To be eligible to be permitted as a sanitarian-in-training, the applicant must:

(1) Be of good moral character;

(2) Have a bachelor's or higher degree from an accredited college or university; and

(3) Successfully complete a sanitarian's training course of a minimum of three hundred hours within twelve months of being hired as a sanitarian-in-training.

(b) A person may practice as a sanitarian-in-training for a period not to exceed three years.

(c) The board may waive the requirements of subdivision (3) of subsection (a) and subsection (b) of this section, for a person who experiences an undue hardship, as determined by the board.

§30-17-11. Persons exempted from licensure.

The activities and services of qualified members of other recognized professions practicing environmental health science consistent with the laws of this state, their training and any code of ethics of their professions so long as such person does not represent themselves as a registered sanitarian, sanitarian or sanitarian-in-training as defined by this article.

§30-17-12. License from another state.

The board may issue a license or a certificate to practice environmental health science or public health sanitation in this state, without requiring an examination, to an applicant from another jurisdiction who:

(1) Is of good moral character;

(2) Holds a valid sanitarian license or other authorization to practice environmental health science or public health sanitation in another jurisdiction and meets requirements which are substantially equivalent to the requirements set forth in this article;

(3) Is not currently being investigated by a disciplinary authority of this state or another jurisdiction, does not have charges pending against his or her license or other authorization to practice environmental health science or public health sanitation, and has never had a license or other authorization to practice environmental health science or public health sanitation revoked;

(4) Has not previously failed an examination for licensure in this state;

(5) Has paid all the applicable fees;

(6) Completes any additional training as determined by the board; and

(7) Completes such other action as required by the board.

§30-17-13. Renewal requirements.

(a) The board may issue, renew and charge fees for licenses, certificates and permits for an eighteen month period commencing July 1, 2010, and ending December 31, 2011.

(b) Commencing January 1, 2012, and annually or biennially thereafter, a person regulated by this article shall renew his or her license, permit or certificate by completing a form prescribed by the board, paying the applicable fees and submitting any other information required by the board.

(c) The board shall charge a fee for each renewal of a license, permit or certificate and may charge a late fee for any renewal not paid by the due date.

(d) The board shall require as a condition for the renewal of a license, permit or certificate that each person regulated by this article complete continuing education.

(e) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license, permit or certificate.

§30-17-14. Display of license, permit or certificate.

(a) The board shall prescribe the form for a license, permit and certificate and may issue a duplicate upon payment of a fee.

(b) Any person, not employed by the bureau or a municipal or county health department, shall conspicuously display his or her license, permit or certificate at his or her principal place of practice.

(c) A person regulated by the board shall carry valid proof of licensure, permit or certificate on his or her person during the performance of his or her duties.

§30-17-15. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee or certificate holder.

(c) The board may cause an investigation to be made into the facts and circumstances giving rise to the complaint.

(d) After reviewing any information obtained through an investigation, the board shall determine if probable cause

exists that the licensee, permittee or certificate holder has violated this article.

(e) Upon a finding that probable cause exists that the licensee, permittee or certificate holder has violated this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, certificate or permit or the imposition of sanctions against the licensee, permittee or certificate holder. The hearing shall be held in accordance with the provisions of this article.

(f) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by this article.

(g) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(h) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license, permit or certificate of, impose probationary conditions upon or take disciplinary action against, any licensee, permittee or certificate holder for any of the following reasons:

(1) Obtaining a license, permit or certificate by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk;

(4) Violating this article or lawful order of the board that placed the public at risk;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization denied by the proper authorities of another jurisdiction, irrespective of intervening appeals and stays; or

(6) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(i) For the purposes of subsection (h) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee, permittee or certificate holder to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-17-16. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, permittee or certificate holder has violated this article, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-17-17. Judicial review; appeal to Supreme Court of Appeals.

Any licensee, permittee or certificate holder adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-17-18. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee,

3 permittee or certificate holder has knowingly violated this
4 article, the board may bring its information to the attention of
5 an appropriate law-enforcement official who may cause
6 criminal proceedings to be brought.

7 (b) If a court finds that a person violating this article, is
8 guilty of a misdemeanor and, upon conviction thereof, shall
9 be fined not less than $500 nor more than $1,000 or confined
10 in jail not more than six months, or both fined and confined.

§30-17-19. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 156

(S. B. 390 - By Senators Palumbo, Yost and Green)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §30-18-11 of the Code of West Virginia, 1931, as amended, relating to penalties for violations of private investigative and security services regulations.

Be it enacted by the Legislature of West Virginia:

That §30-18-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-11. Penalties.

1 (a) Any person, licensed or unlicensed, who violates any
2 of the provisions of this article is guilty of a misdemeanor and,
3 upon conviction, shall be fined not less than $100 nor more
4 than $5,000 or be confined in jail for not more than one year,
5 or both.

6 (b) In the case of a violation of subsection (a) of section
7 eight, a fine is assessed by the court for each day that an
8 individual conducted the private investigation business or
9 security guard business. In the case of a firm license, the fine
10 is based on each day that the private investigative or security
11 services were provided multiplied by the number of
12 unauthorized persons providing those services.

CHAPTER 157

(H. B. 4559 - By Delegates Morgan and Stephens)

[Passed March 12, 2010; in effect from passage.]
[Approved by the Governor on March 25, 2010.]

AN ACT to amend and reenact §30-19-8 of the Code of West Virginia, 1931, as amended, relating to the requirements to be a certified as a registered forester.

Be it enacted by the Legislature of West Virginia:

That §30-19-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. FORESTERS.

§30-19-8. General requirements to be certified as a registered forester.

1 (a) To be eligible to be certified as a registered forester, the
2 applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have obtained either:

6 (A) Completion of a four-year degree program or masters
7 degree program in forest management, accredited by the
8 Society of American Foresters, or other accrediting body as
9 determined by the board, and have two years related
10 experience in the field of forestry; or

11 (B) Completion of a two-year technical forestry program
12 in a program accredited or recognized by the Society of
13 American Foresters, completion of a bachelor's degree in a
14 field used in the practice of forestry as approved by the board
15 and four years related experience in the field of forestry;

16 (4) Successfully pass an examination approved by the
17 board.

18 (b) Those persons licensed by the board as a forester as of
19 the effective date of this section are not required to take the
20 examination.

CHAPTER 158

(Com. Sub. for H. B. 4140 - By Delegates Morgan, Stephens, Swartzmiller, Staggers, Martin, Givens, Hartman, Ross, C. Miller, Manypenny and Hatfield)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §30-20-8a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-20-1, §30-20-2, §30-20-3, §30-20-4, §30-20-5, §30-20-6, §30-20-7, §30-20-8, §30-20-9, §30-20-10, §30-20-11, §30-20-12, §30-20-13, §30-20-14 and §30-20-15 of said code; and to amend said code by adding thereto seven new sections, designated §30-20-16, §30-20-17, §30-20-18, §30-20-19, §30-20-20, §30-20-21 and §30-20-22, all relating to the Board of Physical Therapy; prohibiting the practice of physical therapy without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license requirements; clarifying a scope of practice; providing for licensure for persons licensed in another state; establishing renewal requirements; providing permit requirements; establishing a special volunteer license; clarifying requirements for a license that is delinquent, expired or inactive; providing exemptions from licensure; requiring display of license; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing

and notice requirements; providing for civil causes of action and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-20-8a of the Code of West Virginia, 1931, as amended, be repealed; that §30-20-1, §30-20-2, §30-20-3, §30-20-4, §30-20-5, §30-20-6, §30-20-7, §30-20-8, §30-20-9, §30-20-10, §30-20-11, §30-20-12, §30-20-13, §30-20-14 and §30-20-15 of said code be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-20-16, §30-20-17, §30-20-18, §30-20-19, §30-20-20, §30-20-21 and §30-20-22, all to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-1. Unlawful acts.
§30-20-2. Applicable law.
§30-20-3. Definitions.
§30-20-4. West Virginia Board of Physical Therapy.
§30-20-5. Powers and duties of the board.
§30-20-6. Rulemaking.
§30-20-7. Fees; special revenue account; administrative fines.
§30-20-8. License to practice physical therapy.
§30-20-9. Scope of practice of a physical therapist.
§30-20-10. License to act as a physical therapist assistant.
§30-20-11. License to practice physical therapy from another jurisdiction.
§30-20-12. Temporary permits.
§30-20-13. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.
§30-20-14. Renewal requirements.
§30-20-15. Delinquent and expired license requirements.
§30-20-16. Inactive license requirements.
§30-20-17. Exemption from licensure.
§30-20-18. Display of license.
§30-20-19. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-20-20. Procedures for hearing; right of appeal.
§30-20-21. Judicial review.
§30-20-22. Criminal proceedings; penalties.

§30-20-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice physical therapy in this state without a license or

permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a physical therapist or a physical therapist assistant unless the person has been duly licensed or permitted under the provisions of this article, and the license or permit has not expired, been suspended or revoked.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of physical therapy, except through a licensee or permittee.

(c) A person who is not licensed under this article as a physical therapist may not characterize himself or herself as a "physical therapist", "physiotherapist", or "doctor of physical therapy", nor may a person use the designation "PT", "DPT", "LPT", "CPT", or "RPT".

(d) A person who is not licensed under this article as a physical therapist assistant may not characterize himself or herself as a "physical therapist assistant", nor may a person use the designation "PTA".

§30-20-2. Applicable law.

The practices licensed under the provisions of this article and the Board of Physical Therapy are subject to article one of this chapter, the provisions of this article, and any rules promulgated hereunder.

§30-20-3. Definitions.

As used in this article:

(1) "Applicant" means any person making application for an original or renewal license or a temporary permit under the provisions of this article.

(2) "Board" means the West Virginia Board of Physical Therapy.

(3) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity providing physical therapy services.

(4) "Consultation" means a physical therapist renders an opinion or advice to another physical therapist or health care provider through telecommunications.

(5) "Direct supervision" means the actual physical presence of the physical therapist in the immediate treatment area where the treatment is being rendered.

(6) "General supervision" means the physical therapist must be available at least by telecommunications.

(7) "License" means a physical therapist license or license to act as a physical therapist assistant issued under the provisions of this article.

(8) "Licensee" means a person holding a license under the provisions of this article.

(9) "On-site supervision" means the supervising physical therapist is continuously on-site and present in the building where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session.

(10) "Permit" or "temporary permit" means a temporary permit issued under the provisions of this article.

(11) "Permittee" means any person holding a temporary permit issued pursuant to the provisions of this article.

(12) "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and routine tasks related to physical therapy services under the direct supervision of a physical therapist.

(13) "Physical therapist" means a person engaging in the practice of physical therapy who holds a license or permit issued under the provisions of this article.

(14) "Physical therapist assistant" means a person holding a license or permit issued under the provisions of this article who assists in the practice of physical therapy by performing patient related activities delegated to him or her by a physical therapist and performs under the supervision of a physical therapist and which patient related activities commensurate with his or her education and training, including physical therapy procedures, but not the performance of evaluative procedures or determination and modification of the patient plan of care.

(15) "Practice of physical therapy" or "physiotherapy" means the care and services as described in section nine of this article.

(16) "Telecommunication" means audio, video or data communication.

§30-20-4. West Virginia Board of Physical Therapy.

(a) The West Virginia Board of Physical Therapy is continued. The members of the board in office on July 1, 2010, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) To be effective July 1, 2010, the Governor shall appoint, by and with the advice and consent of the Senate:

8 (1) One person who is a physical therapist assistant for a
9 term of five years; and

10 (2) One citizen member, who is not licensed under the
11 provisions of this article and who does not perform any
12 services related to the practice of the professions regulated
13 under the provisions of this article or have a financial interest
14 in any health care profession, for a term of three years.

15 (c) Commencing July 1, 2010, the board shall consist of
16 the following seven members:

17 (1) Five physical therapists;

18 (2) One physical therapist assistant; and

19 (3) One citizen member.

20 (d) After the initial appointment term, the term shall be
21 for five years. All appointments to the board shall be made
22 by the Governor by and with the advice and consent of the
23 Senate.

24 (e) Each licensed member of the board, at the time of his
25 or her appointment, must have held a license in this state for
26 a period of not less than five years immediately preceding the
27 appointment.

28 (f) Each member of the board must be a resident of this
29 state during the appointment term.

30 (g) A member may not serve more than two consecutive
31 full terms. A member may continue to serve until a
32 successor has been appointed and has qualified.

33 (h) A vacancy on the board shall be filled by appointment
34 by the Governor for the unexpired term of the member whose

office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked.

(k) Any member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(l) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(m) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(n) A majority of the members of the board constitutes a quorum.

(o) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-20-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses and permits;

(3) Establish procedures for submitting, approving and rejecting applications for licenses and permits;

(4) Determine the qualifications of any applicant for licenses and permits;

(5) Prepare, conduct, administer and grade examinations for licenses;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive secretary;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators and contracted employees necessary to enforce the provisions of this article;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(11) Conduct disciplinary hearings of persons regulated by the board;

(12) Determine disciplinary action and issue orders;

(13) Institute appropriate legal action for the enforcement of the provisions of this article;

(14) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(15) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(16) Establish the continuing education requirements for licensees;

(17) Issue, renew, combine, deny, suspend, restrict, revoke or reinstate licenses and permits;

(18) Establish a fee schedule;

(19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(20) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Contract with third parties to administer examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and

52 (3) Confer with the Attorney General or his or her
53 assistant in connection with legal matters and questions.

§30-20-6. Rulemaking.

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 licenses and permits;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare or
8 administer, or both, examinations and reexaminations;

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examinations;

11 (6) Standards for approval of courses and curriculum;

12 (7) Procedures for the issuance and renewal of licenses
13 and permits;

14 (8) A fee schedule;

15 (9) The scope of practice and supervision of physical
16 therapist assistants;

17 (10) Responsibilities of a physical therapist and physical
18 therapist assistant concerning the practice and supervision of
19 physical therapy aides;

20 (11) Continuing education requirements for licensees;

(12) Establishing a maximum ratio of physical therapist assistants, or physical therapy aides involved in the practice of physical therapy, or any combinations that can be supervised by a physical therapist at any one time;

(13) Exceptions to the ratio of physical therapist assistants a physical therapist may supervise including emergencies, safety and temporary situations;

(14) Permitting a physical therapist assistant to directly supervise a physical therapy aide in an emergency situation;

(15) The procedures for denying, suspending, restricting, revoking, reinstating or limiting the practice of licensees and permittees;

(16) Adopt a standard for ethics;

(17) Requirements for inactive or revoked licenses or permits; and

(18) Any other rules necessary to effectuate the provisions of this article.

(b) The board shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, to establish a maximum ratio of physical therapist assistants, or physical therapy aides involved in the practice of physical therapy, or any combinations that can be supervised by a physical therapist at any one time.

(c) All of the board's rules in effect on July 1, 2010, shall remain in effect until they are amended or repealed and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-20-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 "West Virginia Board of Physical Therapy Fund", which is
5 continued. The fund is used by the board for the
6 administration of this article. Except as may be provided in
7 article one of this chapter, the board retains the amount in the
8 special revenue account from year to year. No compensation
9 or expense incurred under this article is a charge against the
10 General Revenue Fund.

11 (b) Any amounts received as fines pursuant to this article
12 shall be deposited into the General Revenue Fund of the State
13 Treasury.

§30-20-8. License to practice physical therapy.

1 (a) To be eligible for a license to engage in the practice
2 of physical therapy, the applicant must:

3 (1) Submit an application to the board;

4 (2) Be at least eighteen years of age;

5 (3) Be of good moral character;

6 (4) Have graduated from an accredited school of physical
7 therapy approved by the Commission on Accreditation in
8 Physical Therapy Education or a successor organization;

9 (5) Pass a national examination as approved by the board;

10 (6) Not be an alcohol or drug abuser, as these terms are
11 defined in section eleven, article one-a, chapter twenty-seven
12 of this code: *Provided*, That an applicant in an active

recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed; and

(9) Has fulfilled any other requirement specified by the board.

(b) A physical therapist shall use the letters "PT" immediately following his or her name to designate licensure under this article.

(c) A license to practice physical therapy issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided,* That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-20-9. Scope of practice of a physical therapist.

A physical therapist may:

(1) Examine, evaluate and test patients or clients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement related conditions in order to determine a diagnosis, prognosis and plan of treatment intervention, and to assess the ongoing effects of intervention: *Provided,* That electromyography examination and electrodiagnostic studies

other than the determination of chronaxia and strength duration curves shall not be performed except under the supervision of a physician electromyographer and electrodiagnostician;

(2) Alleviate impairments, functional limitations and disabilities by designing, implementing and modifying treatment interventions that may include, but are not limited to: therapeutic exercise; functional training in self-care in relation to motor control function; mobility; in home, community or work integration or reintegration; manual therapy techniques including mobilization of the joints; therapeutic massage; fabrication of assistive, adaptive, orthothic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; patient-related instruction; mechanical and electrotherapeutic modalities; and physical agent or modalities including, but not limited to, heat, cold, light, air, water and sound;

(3) Reduce the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health and wellness in populations of all ages; and

(4) Engage in administration, consultation and research.

§30-20-10. License to act as a physical therapist assistant.

(a) To be eligible for a license to act as a physical therapist assistant, the applicant must:

(1) Submit an application to the board;

(2) Be at least eighteen years of age;

(3) Be of good moral character;

(4) Have graduated from a two-year college level education program for physical therapist assistants which meets the standards established by the Commission on Accreditation in Physical Therapy Education and the board;

(5) Have passed the examination approved by the board for a license to act as a physical therapist assistant;

(6) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed; and

(10) Meet any other requirements established by the board.

(b) A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate licensure under this article.

(c) A license to act as a physical therapist assistant issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-20-11. License to practice physical therapy from another jurisdiction.

1 (a) The board may issue a license to practice physical
2 therapy to an applicant who holds a valid license or other
3 authorization to practice physical therapy from another state,
4 if the applicant:

5 (1) Holds a license or other authorization to practice
6 physical therapy in another state which was granted after
7 completion of educational requirements substantially
8 equivalent to those required in this state;

9 (2) Passed an examination that is substantially equivalent
10 to the examination required in this state;

11 (3) Does not have charges pending against his or her
12 license or other authorization to practice, and has never had
13 a license or other authorization to practice revoked;

14 (4) Has not previously failed an examination for a license
15 to practice physical therapy in this state;

16 (5) Has paid the applicable fee;

17 (6) Is a citizen of the United States or is eligible for
18 employment in the United States; and

19 (7) Has fulfilled any other requirement specified by the
20 board.

21 (b) The board may issue a license to practice physical
22 therapy to an applicant who has been educated outside of the
23 United States, if the applicant:

24 (1) Provides satisfactory evidence that the applicant's
25 education is substantially equivalent to the educational

26 requirements for physical therapists under the provisions of
27 this article;

28 (2) Provides written proof that the applicant's school of
29 physical therapy is recognized by its own ministry of
30 education;

31 (3) Has undergone a credentials evaluation as directed by
32 the board that determines that the candidate has met uniform
33 criteria for educational requirements as further established by
34 rule;

35 (4) Has paid the applicable fee;

36 (5) Is eligible for employment in the United States; and

37 (6) Complete any additional requirements as required by
38 the board.

39 (c) The board may issue a restricted license to an applicant
40 who substantially meets the criteria established in subsection
41 (b) of this section.

§30-20-12. Temporary permits.

1 (a) Upon completion of the application and payment of
2 the nonrefundable fees, the board may issue a temporary
3 permit, for a period not to exceed ninety days, to an applicant
4 to practice as a physical therapist in this state or act as a
5 physical therapist assistant in this state, if the applicant has
6 completed the educational requirements set out in this article,
7 pending the examination and who works under a supervising
8 physical therapist with the scope of the supervision to be
9 defined by legislative rule.

10 (b) The temporary permit expires thirty days after the
11 board gives written notice to the permittee of the results of

the first examination held following the issuance of the temporary permit, if the permittee receives a passing score on the examination. The permit shall expire immediately if the permittee receives a failing score on the examination.

(c) A temporary permit may be revoked by a majority vote of the board.

(d) An applicant may be issued only one temporary permit, and upon the expiration of the temporary permit, may not practice as a physical therapist or act as physical therapist assistant until he or she is fully licensed under the provisions of this article.

§30-20-13. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for physical therapists or physical therapist assistants, as the case may be, retired or retiring from active practice who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Physical Therapy to physical therapists or physical therapist assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special volunteer license provided in this section which shall contain the applicant's acknowledgment that:

(1) The applicant's practice under the special volunteer license will be exclusively devoted to providing physical therapy care to needy and indigent persons in West Virginia;

(2) The applicant may not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any physical therapy services rendered under the special volunteer license;

(3) The applicant shall supply any supporting documentation that the board may reasonably require; and

(4) The applicant shall continue to participate in continuing education as required by the board for special volunteer physical therapists or physical therapist assistants license, as the case may be.

(b) Any physical therapist or physical therapist assistant who renders any physical therapy service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the physical therapy service at the clinic unless the act or omission was the result of gross negligence or willful misconduct on the part of the physical therapist or physical therapist assistant. In order for the immunity under this subsection to apply, there must be a written agreement between the physical therapist or physical therapist assistant and the clinic stating that the physical therapist or physical therapist assistant will provide voluntary uncompensated physical therapy services under the control of the clinic to patients of the clinic before the rendering of any services by the physical therapist or

physical therapist assistant at the clinic: *Provided,* That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1,000,000 per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a physical therapist or physical therapist assistant rendering voluntary physical therapy services at or for the clinic under a special volunteer license authorized under this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure for a physical therapist or physical therapist assistant, as the case may be, except the fee requirements.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any physical therapist or physical therapist assistant whose license is or has been subject to any disciplinary action or to any physical therapist or physical therapist assistant who has surrendered a license or caused a license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license or who has been denied a license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physical therapist or physical therapist assistant covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policy holder or any beneficiary

85 there of the policy, to any claim covered by the terms of the
86 policy within the policy limits, the immunity from liability of
87 the insured by reason of the care and treatment of needy and
88 indigent patients by a physical therapist or physical therapist
89 assistant who holds a special volunteer license.

§30-20-14. Renewal requirements.

1 (a) All persons regulated by this article shall annually or
2 biannually before January 1, renew his or her license by
3 completing a form prescribed by the board and submitting
4 any other information required by the board.

5 (b) The board shall charge a fee for each renewal of a
6 license and shall charge a late fee for any renewal not paid by
7 the due date.

8 (c) The board shall require as a condition of renewal that
9 each licensee complete continuing education.

10 (d) The board may deny an application for renewal for
11 any reason which would justify the denial of an original
12 application for a license.

§30-20-15. Delinquent and expired license requirements.

1 (a) If a license is not renewed when due, then the board
2 shall automatically place the licensee on delinquent status.

3 (b) The fee for a person on delinquent status shall
4 increase at a rate, determined by the board, for each month or
5 fraction thereof that the renewal fee is not paid, up to a
6 maximum of thirty-six months.

7 (c) Within thirty-six months of being placed on
8 delinquent status, if a licensee wants to return to active
9 practice, he or she must complete all the continuing

education requirements and pay all the applicable fees as set by rule.

(d) After thirty-six months of being placed on delinquent status, a license is automatically placed on expired status and cannot be renewed. A person whose license has expired must reapply for a new license.

§30-20-16. Inactive license requirements.

(a) A licensee who does not want to continue an active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status is not subject to the payment of any fee and may not practice physical therapy or act as a physical therapist assistant in this state.

(c) When the person wants to return to the practice of physical therapy or act as a physical therapist assistant, the person shall submit an application for renewal along with all applicable fees as set by rule.

§30-20-17. Exemptions from licensure.

(a) The following persons are exempt from licensing requirements under the provisions of this article:

(1) A person who practices physical therapy pursuant to a course of study at an institution of higher learning, including, but not limited to, activities conducted at the institution of higher learning and activities conducted outside the institution if under the on-site supervision of a physical therapist;

(2) A person who practices physical therapy in the United States Armed Services, United States Public Health Service

11 or Veterans Administration pursuant to federal regulations
12 for state licensure of health care providers;

13 (3) A physical therapist who is licensed in another
14 jurisdiction of the United States or credentialed to practice
15 physical therapy in another country if that person is teaching,
16 demonstrating or providing physical therapy services in
17 connection with teaching or participating in an educational
18 seminar of no more than sixty calendar days in a calendar
19 year;

20 (4) A physical therapist who is licensed in another state
21 if that person is consulting;

22 (5) A physical therapist who is licensed in another
23 jurisdiction, if that person by contract or employment is
24 providing physical therapy to individuals affiliated with or
25 employed by established athletic teams, athletic
26 organizations or performing arts companies temporarily
27 practicing, competing or performing in the state for no more
28 than sixty calendar days in a calendar year;

29 (6) A physical therapist who is licensed in another
30 jurisdiction who enters this state to provide physical therapy
31 during a declared local, state or national disaster or
32 emergency. This exemption applies for no longer than sixty
33 calendar days in a calendar year following the declaration of
34 the emergency. The physical therapist shall notify the board
35 of their intent to practice;

36 (7) A physical therapist licensed in another jurisdiction
37 who is forced to leave his or her residence or place of
38 employment due to a declared local, state or national disaster
39 or emergency and due to the displacement seeks to practice
40 physical therapy. This exemption applies for no longer than
41 sixty calendar days in a calendar year following the
42 declaration of the emergency. The physical therapist shall
43 notify the board of their intent to practice; and

(8) A person administering simple massages and the operation of health clubs so long as not intended to constitute or represent the practice of physical therapy.

(9) A physical therapist assistant assisting an exempt physical therapist.

(10) Nothing contained in this article prohibits a person from practicing within his or her scope of practice as authorized by law.

§30-20-18. Display of license.

(a) The board shall prescribe the form for a license and permit, and may issue a duplicate license or permit upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her license or permit at his or her principal business location.

§30-20-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause

exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

43 (4) Intentional violation of a lawful order or legislative
44 rule of the board;

45 (5) Having had a license or other authorization revoked
46 or suspended, other disciplinary action taken, or an
47 application for licensure or other authorization revoked or
48 suspended by the proper authorities of another jurisdiction;

49 (6) Aiding or abetting unlicensed practice; or

50 (7) Engaging in an act while acting in a professional
51 capacity which has endangered or is likely to endanger the
52 health, welfare or safety of the public.

53 (h) For the purposes of subsection (g) of this section,
54 effective July 1, 2010, disciplinary action may include:

55 (1) Reprimand;

56 (2) Probation;

57 (3) Restrictions;

58 (4) Administrative fine, not to exceed $1,000 per day per
59 violation;

60 (5) Mandatory attendance at continuing education
61 seminars or other training;

62 (6) Practicing under supervision or other restriction; or

63 (7) Requiring the licensee or permittee to report to the
64 board for periodic interviews for a specified period of time.

65 (i) In addition to any other sanction imposed, the board
66 may require a licensee or permittee to pay the costs of the
67 proceeding.

§30-20-20. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or permittee has violated provisions of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-20-21. Judicial review.

Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-20-22. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee or permittee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $5,000 or confined in jail not more than six months, or both fined and confined.

CHAPTER 159

(H. B. 4138 - By Delegates Morgan, Stephens, Swartzmiller, Hartman, Staggers, D. Poling, Givens, Martin, C. Miller, Porter and Rowan)

[Passed March 12, 2010; in effect from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend and reenact §30-23-6, of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the Medical Imaging and Radiation Therapy Technology Board of Examiners to work with the Board of Medicine regarding the regulation of the practice of Radiologist Assistants.

Be it enacted by the Legislature of West Virginia:

That §30-23-6, of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter, and elsewhere in
3 law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for a license, apprentice
8 license and permit;

9 (3) Establish procedures for submitting, approving and
10 rejecting applications for a license, apprentice license and
11 permit;

12 (4) Determine the qualifications of any applicant for a
13 license, permit, certificate and registration;

14 (5) Provide standards for approved schools of Medical
15 Imaging and Radiation Therapy Technology, procedures for
16 obtaining and maintaining approval, and procedures of
17 revocation of approval where standards are not maintained:
18 *Provided,* That the standards for approved schools meet at
19 least the minimal requirements of the American Registry of
20 Radiologic Technologist JRCERT, JRCNMT or standards
21 determined programmatically equivalent by the board;

22 (6) Work with the West Virginia Board of Medicine to
23 determine the scope of practice, the required education and
24 training, and the type of regulations necessary for Radiologist
25 Assistants;

26 (7) Prepare, conduct, administer and grade written, oral
27 or written and oral examinations for a license, certificate and
28 registration;

(8) Determine the passing grade for the examinations;

(9) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(10) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article;

(11) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(12) Conduct disciplinary hearings of persons regulated by the board;

(13) Determine disciplinary action and issue orders;

(14) Institute appropriate legal action for the enforcement of the provisions of this article;

(15) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(16) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(17) Establish, by legislative rule, the continuing education requirements for licensees, permittees, certificate holders and registrants; and

(18) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

56 (c) The board may:

57 (1) Contract with third parties to administer the
58 examinations required under the provisions of this article;

59 (2) Define, by legislative rule, the fees charged under the
60 provisions of this article;

61 (3) Issue, renew, deny, suspend, revoke or reinstate a
62 license, permit, certificate and registration;

63 (4) Sue and be sued in its official name as an agency of
64 this state;

65 (5) Confer with the Attorney General or his or her
66 assistant in connection with legal matters and questions; and

67 (6) Take all other actions necessary and proper to
68 effectuate the purposes of this article.

CHAPTER 160

(Com. Sub. for H. B. 4186 - By Delegates Williams, Morgan, Ennis, Stephens, Moye, C. Miller and Rowan)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §30-25-1, §30-25-2, §30-25-3, §30-25-4, §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10 and §30-25-11 of the Code of West Virginia, 1931, as amended; and that said code be amended by adding thereto seven new sections, designated §30-25-12, §30-25-13,

§30-25-14, §30-25-15, §30-25-16, §30-25-17 and §30-25-18, all relating to the practice of nursing home administration; continuing the West Virginia Nursing Home Administrators Licensing Board; prohibiting the practice of nursing home administration without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; providing permit requirements; requiring display of license; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-25-1, §30-25-2, §30-25-3, §30-25-4, §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10 and §30-25-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-25-12, §30-25-13, §30-25-14, §30-25-15, §30-25-16, §30-25-17 and §30-25-18, all to read as follows:

ARTICLE 25. NURSING HOME ADMINISTRATORS.

§30-25-1. Unlawful acts.
§30-25-2. Applicable law.
§30-25-3. Definitions.
§30-25-4. West Virginia Nursing Home Administrators Licensing Board.
§30-25-5. Powers and duties of the board.
§30-25-6. Rulemaking.
§30-25-7. Fees; special revenue account; administrative fines.
§30-25-8. Qualifications for license; exceptions; application; fees.
§30-25-9. License to practice nursing home administration from another jurisdiction.

§30-25-10. Temporary and Emergency Permits.
§30-25-11. Renewal requirements.
§30-25-12. Inactive license requirements.
§30-25-13. Display of license.
§30-25-14. Complaints; investigations; due process procedure; grounds for disciplinary action.
§30-25-15. Procedures for hearing; right of appeal.
§30-25-16. Judicial review.
§30-25-17. Criminal proceedings; penalties.
§30-25-18. Single act evidence of practice.

§30-25-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice nursing home administration in this state without a license or permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a nursing home administrator unless the person has been duly licensed or permitted under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of nursing home administration, except through a licensee or permittee.

§30-25-2. Applicable law.

The practice licensed under the provisions of this article and the West Virginia Nursing Home Administrators Licensing Board is subject to article one of this chapter, the provisions of this article, and any rules promulgated hereunder.

§30-25-3. Definitions.

As used in this article:

(1) "Applicant" means any person making application for an original or renewal license or a temporary or emergency permit under the provisions of this article.

5 (2) "Board" means the West Virginia Nursing Home
6 Administrators Licensing Board created by this article.

7 (3) "License" means a license to practice nursing home
8 administration under the provisions of this article.

9 (4) "Licensee" means a nursing home administrator
10 licensed under this article.

11 (5) "Nursing home" means a nursing home as that term
12 is defined in subdivision (c), section two, article five-c,
13 chapter sixteen of this code.

14 (6) "Nursing home administrator" means a person who
15 performs or is responsible for planning, organizing, directing
16 and controlling a nursing home, whether or not such the
17 person has an ownership interest in the nursing home or
18 shares the functions.

19 (7) "Permit" means a temporary permit or emergency
20 permit issued under the provisions of this article.

21 (8) "Permittee" means any person holding a permit
22 issued pursuant to the provisions of this article.

23 (9) "Practice of nursing home administration" means any
24 service requiring nursing home administration education,
25 training, or experience and applying such to planning,
26 organizing, staffing, directing, and controlling of the total
27 management of a nursing home.

§30-25-4. West Virginia Nursing Home Administrators Licensing Board.

1 (a) The West Virginia Nursing Home Administrators
2 Licensing Board terminates on June 30, 2010. The terms of
3 the members of the board serving on June 1, 2010, terminate
4 on June 30, 2010.

5 (b) Prior to July 1, 2010, the Governor shall appoint, by
6 and with advice and consent of the Senate:

7 (1) Two persons who are licensed nursing home
8 administrators, each for a term of five years;

9 (2) One person who is licensed as a nursing home
10 administrator for a term of four years;

11 (3) One person who is licensed as a nursing home
12 administrator for a term of three years;

13 (4) One person who is licensed as a nursing home
14 administrator for a term of two years; and

15 (5) Two citizen members, who are not licensed under the
16 provisions of this article and who do not perform any
17 services related to the practice of the profession regulated
18 under the provisions of this article, one for a term of four
19 years, and one for a term of three years.

20 (c) After the initial appointment, the term shall be for five
21 years. All appointments to the board shall be made by the
22 Governor by and with the advice and consent of the Senate.

23 (d) Commencing July 1, 2010, the board is created and
24 shall consist of the following seven voting members and one
25 ex-officio nonvoting member:

26 (1) Five members who are licensed nursing home
27 administrators;

28 (2) Two citizen members, who are not licensed under the
29 provisions of this article and who do not perform any
30 services related to the practice of the professions regulated
31 under the provisions of this article, for a term of three years;
32 and

(3) The Commissioner of the Bureau for Public Health or his or her designee is an ex-officio nonvoting member.

(e) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment.

(f) Each member of the board must be a resident of this state during the appointment term.

(g) A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, he or she is convicted of a felony under the laws of any jurisdiction, or he or she becomes a nonresident of this state.

(k) The board shall elect annually one of its members as a chairperson and one of its members as a secretary who serve at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least two meetings each year. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-25-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses and permits;

(3) Establish procedures for submitting, approving and rejecting applications for licenses and permits;

(4) Determine the qualifications of any applicant for licenses and permits;

(5) Prepare, conduct, administer and grade examinations for licenses;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators and contracted employees necessary to enforce the provisions of this article;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(11) Conduct disciplinary hearings of persons regulated by the board;

(12) Determine disciplinary action and issue orders;

(13) Institute appropriate legal action for the enforcement of the provisions of this article;

(14) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(15) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(16) Establish the continuing education requirements for licensees;

(17) Issue, renew, combine, deny, restrict, suspend, restrict, revoke or reinstate licenses and permits;

41 (18) Establish a fee schedule;

42 (19) Propose rules in accordance with the provisions of
43 article three, chapter twenty-nine-a of this code to implement
44 the provisions of this article; and

45 (20) Take all other actions necessary and proper to
46 effectuate the purposes of this article.

47 (c) The board may:

48 (1) Contract with third parties to administer examinations
49 required under the provisions of this article;

50 (2) Sue and be sued in its official name as an agency of
51 this state; and

52 (3) Confer with the Attorney General or his or her
53 assistant in connection with legal matters and questions.

§30-25-6. Rulemaking.

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 licenses and permits;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examinations;

11 (6) Standards for approval of courses and curriculum;

12 (7) Procedures for the issuance and renewal of licenses
13 and permits;

14 (8) Procedures to address substandard quality of care
15 notices from the West Virginia Office of Health Facility
16 Licensure;

17 (9) A fee schedule;

18 (10) Procedure to publish a notice of a disciplinary
19 hearing against a licensee;

20 (11) Continuing education requirements for licensees;

21 (12) The procedures for denying, suspending, restricting,
22 revoking, reinstating or limiting the practice of licensees and
23 permittees;

24 (13) Adoption of a standard for ethics;

25 (14) Requirements for inactive or revoked licenses or
26 permits; and

27 (15) Any other rules necessary to effectuate the
28 provisions of this article.

29 (b) All of the board's rules in effect on July 1, 2010, shall
30 remain in effect until they are amended or repealed, and
31 references to provisions of former enactments of this article
32 are interpreted to mean provisions of this article.

§30-25-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate

3 special revenue fund in the State Treasury designated the
4 "West Virginia Nursing Home Administrators Licensing
5 Board Fund", which is continued. The fund is used by the
6 board for the administration of this article. Except as may be
7 provided in article one of this chapter, the board retains the
8 amount in the special revenue account from year to year. No
9 compensation or expense incurred under this article is a
10 charge against the General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to
12 this article, shall be deposited into the General Revenue Fund
13 of the State Treasury.

§30-25-8. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license to engage in the practice
2 of nursing home administration, the applicant must:

3 (1) Submit an application to the board;

4 (2) Be of good moral character;

5 (3) Obtain a baccalaureate degree;

6 (4) Pass a state and national examination as approved by
7 the board;

8 (5) Complete the required experience as prescribed by
9 the board;

10 (6) Successfully complete a criminal background check,
11 through the West Virginia State Police and the National
12 Criminal Investigative Center;

13 (7) Successfully complete a Health Integrity Protection
14 Data Bank check;

(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(9) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license which conviction remains unreversed;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of nursing home administration, which conviction remains unreversed; and

(11) Has fulfilled any other requirement specified by the board.

(b) A license issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided,* That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-25-9. License to practice nursing home administration from another jurisdiction.

The board may issue a license to practice to an applicant of good moral character who holds a valid license or other authorization to practice nursing home administration from another state, if the applicant:

(1) Holds a license or other authorization to practice in another state which was granted after the completion of educational requirements substantially equivalent to those required in this state and passed examinations that are

9 substantially equivalent to the examinations required in this
10 state;

11 (2) Does not have charges pending against his or her
12 license or other authorization to practice, and has never had
13 a license or other authorization to practice revoked;

14 (3) Has not previously failed an examination for licensure
15 in this state;

16 (4) Has paid the applicable fee;

17 (5) Is a citizen of the United States or is eligible for
18 employment in the United States; and

19 (6) Has fulfilled any other requirement specified by the
20 board.

§30-25-10. Temporary and Emergency Permits.

1 (a) The board may issue a temporary permit for a period
2 of ninety days, to an applicant seeking licensure pursuant to
3 section nine of this article who has accepted employment in
4 West Virginia, but who must wait for the board to meet to act
5 on his or her application. The temporary permit may be
6 renewed at the discretion of the board.

7 (b) The board may issue an emergency permit to a person
8 who is designated as an acting nursing home administrator,
9 if a licensed nursing home administrator dies or is unable to
10 continue due to an unexpected cause. The board may issue
11 the emergency permit to the owner, governing body or other
12 appropriate authority in charge of the nursing home, if it
13 finds the appointment will not endanger the safety of the
14 occupants of the nursing home. A emergency permit is valid
15 for a period determined by the board not to exceed six
16 months and shall not be renewed.

(c) The board shall charge a fee for the temporary permit and emergency permit.

§30-25-11. Renewal requirements.

(a) All persons regulated by the article shall annually before June 30, renew his or her license by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license or permit and shall charge a late fee for any renewal not properly completed and received with the appropriate fee by the board before June 30.

(c) The board shall require as a condition for the renewal that each licensee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-25-12. Inactive license requirements.

(a) A licensee who does not want to continue in active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status is exempt from fee requirements and continuing education requirements, and cannot practice in this state.

(c) When an inactive licensee wants to return to active practice, he or she must complete all the continuing education requirements for every licensure year the licensee was on inactive status and pay all the applicable fees as determined by the board.

§30-25-13. Display of license.

(a) The board shall prescribe the form for a license and permit, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her license or permit at his or her principal business location.

§30-25-14. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or permit of, impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-25-15. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, or permittee has violated any provision of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-25-16. Judicial review.

Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-25-17. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 not more than $1,000 or confined in jail not more than six months, or both fined and confined.

§30-25-18. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

CHAPTER 161

(Com. Sub. for H. B. 4133 - By Delegates Morgan, Stephens, Martin and Swartzmiller)

[Passed March 9, 2010; in effect from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §30-31-9 of the Code of West Virginia, 1931, as amended, relating to the practice of marriage and family therapy; and revising the licensing and eligibility requirements for the practice of marriage and family therapy.

Be it enacted by the Legislature of West Virginia:

That §30-31-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-9. Requirements for a license to practice marriage and family therapy.

1 (a) To be eligible for a license to practice marriage and
2 family therapy, an applicant must:

3 (1) Be of good moral character;

4 (2) Be at least eighteen years of age;

5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;

7 (4) Pay the applicable fee;

8 (5)(A)(i) Have earned a master's degree in marriage and
9 family therapy from a program accredited by the
10 Commission on Accreditation for Marriage and Family
11 Therapy Education, the Council for Accreditation of
12 Counseling and Related Education Programs, or a
13 comparable accrediting body as approved by the board, or in
14 a field closely related to an accredited marriage and family
15 therapy program as determined by the board, or have
16 received training equivalent to such degree as may be
17 determined by the board; and

18 (ii) Have at least two years of supervised professional
19 experience in marriage and family therapy of such a nature
20 as is designated by the board after earning a master's degree
21 or equivalent; or

22 (B) (i) Have earned a doctorate degree in marriage and
23 family therapy from a program accredited by the
24 Commission on Accreditation for Marriage and Family Therapy
25 Education, the Council for Accreditation of Counseling and
26 Related Education Programs, or a comparable accrediting
27 body as approved by the board, or in a field closely related to
28 an accredited marriage and family therapy program as
29 determined by the board, or have received training equivalent
30 to such degree as may be determined by the board; and

31 (ii) Have at least one year of supervised professional
32 experience in marriage and family therapy of such a nature
33 as is designated by the board after earning a doctorate degree
34 or equivalent;

35 (6) Have passed a standardized national certification
36 examination in marriage and family therapy as approved by
37 the board;

38 (7) Not have been convicted of a felony or crime
39 involving moral turpitude under the laws of any jurisdiction:

(A) If the applicant has never been convicted of a felony or a crime involving moral turpitude, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony or a crime involving moral turpitude; or

(B) If the applicant has been convicted of a felony or a crime involving moral turpitude, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a person licensed to practice marriage and family therapy as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes, and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided,* That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step

75 program or other similar group or process, may be
76 considered; and

77 (9) Has fulfilled any other requirement specified by the
78 board.

79 (b) A person who holds a license or other authorization
80 to practice marriage and family therapy issued by another
81 state, the qualifications for which license or other authorization
82 are determined by the board to be at least substantially
83 equivalent to the license requirements in this article, is
84 eligible for licensure.

85 (c) A person seeking licensure under the provisions of
86 this section shall submit an application on a form prescribed
87 by the board and pay all applicable fees.

88 (d) A person who is licensed for five years as of July 1,
89 2010, and has substantially similar qualifications as required
90 by subdivision (1), (2), (3), (4), (5)(A)(i) or (5)(B)(i), (7) and
91 (8) of subsection (a) of this section is eligible for a license to
92 practice marriage and family therapy until July 1, 2012, and
93 is eligible for renewal under section ten.

CHAPTER 162

(Com. Sub. for S. B. 446 - By Senators Helmick, Kessler, Unger and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2010.]

AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating to clarifying that the

surviving spouse and dependents of a deceased public employee participating in a plan of the Public Employees Insurance Agency may only participate in comprehensive group health insurance coverage provided by the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

That §5-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) *Cost-sharing.* -- The director shall provide under
2 any contract or contracts entered into under the provisions of
3 this article that the costs of any group hospital and surgical
4 insurance, group major medical insurance, group prescription
5 drug insurance, group life and accidental death insurance
6 benefit plan or plans shall be paid by the employer and
7 employee.

8 (b) *Spouse and dependent coverage.* -- Each employee
9 is entitled to have his or her spouse and dependents included
10 in any group hospital and surgical insurance, group major
11 medical insurance or group prescription drug insurance
12 coverage to which the employee is entitled to participate:
13 *Provided,* That the spouse and dependent coverage is limited
14 to excess or secondary coverage for each spouse and
15 dependent who has primary coverage from any other source.

For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(c) *Continuation after termination.* -- If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees*

who elected to participate in the plan before July, 1988. -- Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988.* -- Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and

89 dependents for every three days of annual leave or sick leave,
90 or both, which the employee had accrued as of the effective
91 date of his or her retirement. The remaining premium cost
92 shall be borne by the retired employee if he or she elects the
93 coverage. For purposes of this subsection, an employee who
94 has been a participant under spouse or dependent coverage
95 and who reenters the plan within twelve months after
96 termination of his or her prior coverage shall be considered
97 to have elected to participate in the plan as of the date of
98 commencement of the prior coverage. For purposes of this
99 subsection, an employee shall not be considered a new
100 employee after returning from extended authorized leave on
101 or after July 1, 1988.

102 (f) *Increased retirement benefits for retired employees*
103 *with accrued annual and sick leave.* -- In the alternative to
104 the extension of insurance coverage through premium
105 payment provided in subsections (d) and (e) of this section,
106 the accrued annual leave and sick leave of an employee
107 participating in the plan may be applied, on the basis of two
108 days' retirement service credit for each one day of accrued
109 annual and sick leave, toward an increase in the employee's
110 retirement benefits with those days constituting additional
111 credited service in computation of the benefits under any
112 state retirement system. However, the additional credited
113 service shall not be used in meeting initial eligibility for
114 retirement criteria, but only as additional service credited in
115 excess thereof.

116 (g) *Conversion of accrued annual and sick leave for*
117 *extended insurance coverage upon retirement for certain*
118 *higher education employees.* -- Except as otherwise provided
119 in subsection (l) of this section, when an employee, who is a
120 higher education full-time faculty member employed on an
121 annual contract basis other than for twelve months, is
122 compelled or required by law to retire before reaching the
123 age of sixty-five, or when such a participating employee
124 voluntarily retires as provided by law, that employee's

insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for "family" coverage.

(h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) *Retiree participation.* -- All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(j) *Surviving spouse and dependent participation.* -- A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) *Elected officials.* -- In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(l) *Participation of certain former employees.* -- An employee, eligible for coverage under the provisions of this article who has twenty years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for twenty years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays one hundred five percent of the cost of retiree coverage: *Provided,* That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

(m) *Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001.* -- Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided,* That any person who has participated in the plan prior to July 1, 2001, is not a new

196 employee for purposes of this subsection if he or she
197 becomes reemployed with an employer participating in the
198 plan within two years following his or her separation from
199 employment and he or she elects to participate in the plan
200 upon his or her reemployment.

201 (n) *Prohibition on conversion of accrued years of*
202 *teaching service for extended coverage upon retirement for*
203 *new employees who elect to participate in the plan July,*
204 *2009.* -- Any employee hired on or after July 1, 2009, who
205 elects to participate in the plan may not apply accrued years
206 of teaching service toward the cost of premiums for extended
207 insurance coverage upon his or her retirement.

CHAPTER 163

(Com. Sub. for S. B. 449 - By Senators Helmick, Kessler, Minard, Unger and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §5-16-17 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Public Employees Insurance Act generally; clarifying the definition of pre-existing condition; and providing instances in which participants may enroll or make plan selections.

Be it enacted by the Legislature of West Virginia:

That §5-16-17 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.

§5-16-17. Preexisting conditions not covered; defined.

1 A preexisting condition is an injury, or sickness, or any
2 condition relating to that injury, or sickness, for which a
3 participant is diagnosed, receives treatment, or incurs
4 expenses prior to the effective date of coverage.

5 For all participants enrolling in the plan after the effective
6 date of this section, payment shall be made for expenses
7 incurred for or in connection with a preexisting condition:
8 *Provided,* That participants may enroll or make plan selections
9 only at the time of hire, during annual open enrollment or upon
10 the occurrence of a "qualifying event" under section 125 of the
11 United States Internal Revenue Code.

CHAPTER 164

(S. B. 442 - By Senators Helmick and Unger)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §5-16D-1 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Public Employees Insurance Agency Finance Board may offset annual retiree premium increases with amounts held in the trust.

Be it enacted by the Legislature of West Virginia:

That §5-16D-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-1. Definitions.

1 As used in this article, the term:

2 (a) "Actuarial accrued liability" means that portion, as
3 determined by a particular actuarial cost method, of the
4 actuarial present value of fund obligations and administrative
5 expenses which is not provided by future normal costs.

6 (b) "Actuarial cost method" means a method for
7 determining the actuarial present value of the obligations and
8 administrative expenses of the fund and for developing an
9 actuarially equivalent allocation of the value to time periods,
10 usually in the form of a normal cost and an actuarial accrued
11 liability. Acceptable actuarial methods are the aggregate,
12 attained age, entry age, frozen attained age, frozen entry age
13 and projected unit credit methods.

14 (c) "Actuarially sound" means that calculated
15 contributions to the fund are sufficient to pay the full
16 actuarial cost of the fund. The full actuarial cost includes
17 both the normal cost of providing for fund obligations as they
18 accrue in the future and the cost of amortizing the unfunded
19 actuarial accrued liability over a period of no more than thirty
20 years.

21 (d) "Actuarial present value of total projected benefits"
22 means the present value, at the valuation date, of the cost to
23 finance benefits payable in the future, discounted to reflect
24 the expected effects of the time value of money and the
25 probability of payment.

(e) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(f) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets and related actuarial present values for the fund.

(g) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(h) "Annual required contribution" means the amount employers must contribute in a given year to fully fund the trust, as determined by the actuarial valuation in accordance with requirements of generally accepted accounting principles. This amount shall represent a level of funding that if paid on an ongoing basis is projected to cover the normal cost each year and amortize any unfunded actuarial liabilities of the plan over a period not to exceed thirty years.

(i) "Board" means the Public Employees Insurance Agency Finance Board created in section four, article sixteen of this chapter.

(j) "Cost-sharing multiple employer plan" means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial valuation covers all plan members and the same contribution rate applies for each employer.

(k) "Covered health care expenses" means all actual health care expenses paid by the health plan on behalf of fund beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(l) "Employer" means any employer as defined by section two, article sixteen of this chapter which has or will have retired employees in any Public Employees Insurance Agency health plan.

(m) "Employer annual required contribution" means the portion of the annual required contribution which is the responsibility of that particular employer.

(n) "Fund" means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(o) "Fund beneficiaries" means all persons receiving post-employment health care benefits through the health plan.

(p) "Health plan" means the health insurance plan or plans established under article sixteen of this chapter.

(q) "Minimum annual employer payment" means the annual amount paid by employers which, when combined with the retirees' contributions on their premiums that year, provide sufficient funds such that the annual finance plan of the finance board will cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer payment as part of its financial plan each year as addressed in section five, article sixteen of this chapter.

(r) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is

allocated to a valuation year by the actuarial cost method used for the fund.

(s) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(t) "Other post-employment benefits" or "retiree post-employment health care benefits" means those benefits as addressed by governmental accounting standards board statement no. 43 or any subsequent governmental standards board statement that may be applicable to the fund.

(u) "Plan for other post-employment benefits" means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43 or any subsequent governmental accounting standards board statements that may be applicable to the fund.

(v) "Retiree" means retired employee as defined by section two, article sixteen of this chapter.

(w) "Retirement system" or "system" means the West Virginia Consolidated Public Retirement Board created and established by article ten of this chapter and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(x) "Unfunded actuarial accrued liability" means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

CHAPTER 165

(Com. Sub. for H. B. 4194 - By Delegate Morgan)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §5F-2-1 of the Code of West Virginia, 1931, as amended, and that said code be amended by adding thereto three new sections, designated §15-9A-1, §15-9A-2 and §15-9A-3, all relating to codifying the Division of Justice and Community Services being incorporated in and administered as a part of the Department of Military Affairs and Public Safety.

Be it enacted by the Legislature of West Virginia:

That §5F-2-1 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 §15-9A-1, §15-9A-2 and §15-9A-3, all to read as follows:

Chapter
5F. Reorganization of the Executive Branch of State Government.
15. Public Safety.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Building Commission provided in article six, chapter five of this code;

(2) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;

(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism

Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Services;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.

(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of

83 administrative support and liaison with the office of the
84 Governor:

85 (1) Air Quality Board provided in article two, chapter
86 twenty-two-b of this code;

87 (2) Solid Waste Management Board provided in article
88 three, chapter twenty-two-c of this code;

89 (3) Environmental Quality Board, or its successor board,
90 provided in article three, chapter twenty-two-b of this code;

91 (4) Surface Mine Board provided in article four, chapter
92 twenty-two-b of this code;

93 (5) Oil and Gas Inspectors' Examining Board provided
94 in article seven, chapter twenty-two-c of this code;

95 (6) Shallow Gas Well Review Board provided in article
96 eight, chapter twenty-two-c of this code; and

97 (7) Oil and Gas Conservation Commission provided in
98 article nine, chapter twenty-two-c of this code.

99 (f) The following agencies and boards, including all of
100 the allied, advisory, affiliated or related entities and funds
101 associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Education and
103 the Arts:

104 (1) Library Commission provided in article one, chapter
105 ten of this code;

106 (2) Educational Broadcasting Authority provided in
107 article five, chapter ten of this code;

108 (3) Division of Culture and History provided in article
109 one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and

administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Justice and Community Services provided in article nine a, chapter fifteen of this code;

(8) Division of Corrections provided in chapter twenty-five of this code;

(9) Fire Commission provided in article three, chapter twenty-nine of this code;

(10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

164 (12) Division of Veterans' Affairs and Veterans' Council
165 provided in article one, chapter nine-a of this code.

166 (i) The following agencies and boards, including all of
167 the allied, advisory, affiliated or related entities and funds
168 associated with any agency or board, are incorporated in and
169 administered as a part of the Department of Revenue:

170 (1) Tax Division provided in article one, chapter eleven
171 of this code;

172 (2) Racing Commission provided in article twenty-three,
173 chapter nineteen of this code;

174 (3) Lottery Commission and position of Lottery Director
175 provided in article twenty-two, chapter twenty-nine of this
176 code;

177 (4) Agency of Insurance Commissioner provided in
178 article two, chapter thirty-three of this code;

179 (5) Office of Alcohol Beverage Control Commissioner
180 provided in article sixteen, chapter eleven of this code and
181 article two, chapter sixty of this code;

182 (6) Board of Banking and Financial Institutions provided
183 in article three, chapter thirty-one-a of this code;

184 (7) Lending and Credit Rate Board provided in chapter
185 forty-seven-a of this code;

186 (8) Division of Banking provided in article two, chapter
187 thirty-one-a of this code;

188 (9) The State Budget Office provided in article two of
189 this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the

217 provisions of section two of this article, the position of
218 administrator and the powers, authority and duties of each
219 administrator and agency are not affected by the enactment
220 of this chapter.

221 (l) Except for powers, authority and duties that have been
222 delegated to the secretaries of the departments by the
223 provisions of section two of this article, the existence,
224 powers, authority and duties of boards and the membership,
225 terms and qualifications of members of the boards are not
226 affected by the enactment of this chapter. All boards that are
227 appellate bodies or are independent decision makers shall not
228 have their appellate or independent decision-making status
229 affected by the enactment of this chapter.

230 (m) Any department previously transferred to and
231 incorporated in a department by prior enactment of this
232 section means a division of the appropriate department.
233 Wherever reference is made to any department transferred to
234 and incorporated in a department created in section two,
235 article one of this chapter, the reference means a division of
236 the appropriate department and any reference to a division of
237 a department so transferred and incorporated means a section
238 of the appropriate division of the department.

239 (n) When an agency, board or commission is transferred
240 under a bureau or agency other than a department headed by
241 a secretary pursuant to this section, that transfer is solely for
242 purposes of administrative support and liaison with the
243 Office of the Governor, a department secretary or a bureau.
244 Nothing in this section extends the powers of department
245 secretaries under section two of this article to any person
246 other than a department secretary and nothing limits or
247 abridges the statutory powers and duties of statutory
248 commissioners or officers pursuant to this code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9A. Division of Justice and Community Services.

§15-9A-1. Legislative findings.
§15-9A-2. Division established; appointment of director.
§15-9A-3. Duties and powers of the director.

§15-9A-1. Legislative findings.

The West Virginia Division of Justice and Community Services is required to perform certain administrative and executive functions related to the improvement of the criminal justice and juvenile justice systems, and various component agencies of state and local government with research and performance data, planning, funding and managing programs supported by federal and state granted funds, and through its staff activities on behalf of the Governor's Committee on Crime, Delinquency and Correction, to provide regulatory oversight of law enforcement training and certification, community corrections programs established under the provisions of article eleven-c, chapter sixty-two of this code, and the monitoring of facilities for compliance with juvenile detention facilities standards established by state and federal law. These administrative and executive staffing functions are necessary to provide for planning and coordination of services among the components of the criminal and juvenile justice systems; program development and implementation; and administration of grant funded programs emphasizing safety, prevention, coordination and the general enhancement of the criminal justice system as a whole, as well as such other federal grant funded activities as the Governor may from time to time designate for administration by the division.

§15-9A-2. Division established; appointment of director.

(a) The Division of Justice and Community Services is created. The purpose of the division is to provide executive and administrative support to the Governor's Committee on Crime Delinquency and Correction in the coordination of planning for the criminal justice system, to administer federal and state grant programs assigned to it by the actions of the Governor or Legislature, and to perform such other duties as the legislature may from time to time assign to the division.

(b) The director of the division shall be named by the Governor to serve at his will and pleasure.

(c) The director of the division shall take and subscribe to an oath of office in conformity with article IV, section five of the Constitution of the State of West Virginia.

§15-9A-3 Duties and powers of the director.

(a) The director is responsible for the control and supervision of the division.

(b) The director shall be charged with executive and administrative responsibility to: (i) carry out the specific duties imposed on the Governor's Committee on Crime, Delinquency and Correction under the provisions of article nine, chapter fifteen; article twenty-nine, chapter thirty; and article eleven-c, chapter sixty-two of this code; (ii) maintain appropriate liaison with federal, state and local agencies and units of government, or combinations thereof, in order that all programs, projects and activities for strengthening and improving law enforcement and the administration of criminal justice may function effectively at all levels of government; and (iii) seek sources of federal grant assistance programs that may benefit the state when authorized by the Governor and manage the dispersal of those funds through grant contracts to sub-grantees in a manner consistent with state and federal law, and with sound and accountable management practices for the efficient and effective use of public funds.

20 (c) The director may:

21 (1) Employ necessary personnel, assign them the duties
22 necessary for the efficient management and operation of the
23 division;

24 (2) Work to bridge gaps between federal, state and local
25 units of government, as well as private/non-profit organizations
26 and the general public;

27 (3) Provide staff assistance in the coordination of all
28 facets of the criminal and juvenile justice systems on behalf
29 of the Governor's Committee on Crime Delinquency and
30 Correction, including but not limited to, law enforcement,
31 jails, corrections, community corrections and victim services;

32 (4) Acquire criminal justice resources and coordinate the
33 allocation of these resources to state, local and not-for-profit
34 agencies;

35 (5) Maintain a web based data base for all community
36 correction programs;

37 (6) Through the Criminal Justice Statistical Analysis
38 Center, collect, compile, and analyze crime and justice data
39 in the state, generating statistical and analytical products for
40 criminal justice professionals and policy makers to establish
41 a basis for sound policy and practical considerations for the
42 criminal justice system and make such recommendations for
43 system improvement as may be warranted by such research;

44 (7) Receive and disburse federal and state grants.

45 Nothing in this chapter shall be construed as authorizing
46 the division to undertake direct operational responsibilities in
47 law enforcement or the administration of criminal justice.

CHAPTER 166

(Com. Sub. for S. B. 38 -
By Senators Wells and D. Facemire)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1F-11, relating to creating the West Virginia Servicemembers Civil Relief Act; and adopting the federal Servicemembers Civil Relief Act as state law.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-1F-11, to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-11. West Virginia Servicemembers Civil Relief Act.

(a) This section may be cited as the 'West Virginia Servicemembers Civil Relief Act'

(b) A member of the West Virginia National Guard called to state active duty by the Governor for a period of thirty days or more, shall have all of the protections, rights or benefits that are afforded and may accrue to a person on federal active duty under the provisions of 50 U. S. C. App., §501, *et seq.* as amended by the Servicemembers Civil Relief Act, Pub. L. No. 108-189 (2003).

CHAPTER 167

(Com. Sub. for S. B. 656 - By Senators McCabe, Hall, Kessler, Deem, Jenkins, Green, Stollings and Boley)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1j, relating to special rates for energy-intensive industrial consumers of electric power; setting forth legislative findings on energy-intensive industrial consumers of electric power; defining certain terms; enabling the Public Service Commission to establish special rates for energy-intensive industrial consumers of electric power; setting forth factors that the Public Service Commission may take into consideration in establishing special rates for energy-intensive industrial consumers of electric power, in addition to factors that may already be considered by the Public Service Commission in its rate-setting process; authorizing the Public Service Commission to adopt mechanisms reasonably designed to assure appropriate flexibility and predictability of special rates; establishing procedures for application to the Public Service Commission for a special rate; setting forth data and information to be included in an application for a special rate; establishing qualifications for eligibility for a special rate; and requiring Public Service Commission to determine whether any excess revenue or revenue shortfall created by a special rate authorized pursuant to this section should be allocated among any other customers of the utility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-1j, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1j. Special rates for energy intensive industrial consumers of electric power.

1 (a) The Legislature hereby finds that:

2 (1) West Virginia enjoys relatively low cost electric
3 power rates for residential customers, business and industry
4 and these relatively low rates constitute a competitive
5 economic advantage for West Virginia;

6 (2) West Virginia has many energy intensive industrial
7 consumer of electric power, and has the ability to retain its
8 existing energy intensive industrial consumers of electric
9 power and attract additional energy intensive industrial
10 consumers of electric power in the future, through the
11 adoption of policies and the establishment of rates that
12 enhance and preserve the attractiveness of West Virginia as
13 a place for energy intensive industrial consumers to do
14 business;

15 (3) Energy intensive industrial consumers of electric
16 power create jobs, provide a substantial tax base and enhance
17 the productive capacity, competitiveness and economic
18 opportunities of West Virginia and all of its citizens;

19 (4) Energy intensive industrial consumers of electric
20 power help keep power rates low for all consumers of electric
21 power, including residential customers, by providing a large

consumption base over which the cost of producing electric power may be spread from time to time;

(5) It is in the best interests of West Virginia, the citizens of West Virginia, electric public utilities in West Virginia, and all consumers of electric power in West Virginia, including residential customers, to encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, thereby increasing the creation, preservation and retention of jobs, expanding the tax base, helping keep power rates low for all consumers of electric power, and enhancing the productive capacity, competitiveness and economic opportunities of all citizens of West Virginia; and

(6) To encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, the commission may establish special rates under this section that in its judgment are necessary or appropriate for the continued, new or expanded operation of energy intensive industrial consumers and that can reasonably be expected to support the long-term operation of energy intensive industrial consumers, and that do not impose an unreasonable burden upon electric public utilities or their other customers.

(b) As used in this section:

(1) "Energy intensive industrial consumer" means an industrial facility, plant or enterprise that has a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions.

(2) "Special rate" means a rate set for an energy intensive industrial consumer pursuant to this section.

(c) In addition to any authority of the Commission to allow special rates or contracts under any other provision of the code or rule, and in addition to all other factors which the commission may consider in setting rates for consumers of electric power, including, but not limited to the Commission's responsibilities under subsection (b), section one, article one of this chapter, and notwithstanding any other provisions of this code to the contrary, in setting a special rate the commission may take into consideration fluctuations in market prices for the goods or products produced by the energy intensive industrial consumer of electric power, or other variables or factors which may be relevant to or affect the continuing vitality of the energy intensive industrial consumer of electric power in dynamic markets. In setting a special rate by reference to fluctuations in market prices for the goods and products produced by an energy intensive industrial consumer of electric power, the commission may establish variable rates including, but not limited to, ceilings and floors on the special rate, banking or crediting mechanisms, caps, limits or other similar types of safeguards that are intended by the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in the special rate over time, to permit the energy intensive industrial customer the ability to make the capital investments and other commitments necessary to support the continued operation of the facility.

(d) An energy intensive industrial consumer wishing to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power, regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the energy intensive industrial consumer and the utility, the energy intensive industrial consumer and the utility shall make a joint filing with the commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the energy intensive industrial consumer may file a petition

with the commission to consider establishing a special rate. The commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(e) In order to qualify for a special rate, an energy intensive industrial consumer shall:

(1) Have a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions;

(2) Create or retain at least twenty-five full time jobs in West Virginia;

(3) Have invested not less than $500,000 in fixed assets, including machinery and equipment, in West Virginia;

(4) Provide reasonable evidence that due to market conditions in the industry in which the energy intensive industrial consumer operates, or other factors bearing on investment in and operation of the industrial facility or facilities, without the special rate the operation or continued operation of the industrial facility or facilities is threatened or not economically viable under reasonable assumptions and projections regarding the market and the operation of the industrial facility or facilities;

(5) Provide reasonable evidence that, with the special rate, the energy intensive industrial consumer intends to operate the industrial facility or facilities in West Virginia for an extended period of time, and that the operation or continued operation of the industrial facility or facilities for an extended period of time appears economically viable, under reasonable assumptions and projections regarding the market in which the energy intensive industrial consumer operates and regarding the operation of the industrial facility or facilities; and

123 (6) Provide information and data setting forth how the
124 energy intensive industrial consumer meets the qualifications
125 of this section, and how the special rate advances the policy
126 goals set forth in subsection (a) of this section.

127 (f) The Commission shall determine whether any excess
128 revenue or revenue shortfall created by a special rate
129 authorized pursuant to this section should be allocated among
130 any other customers of the utility. In making that
131 determination, the Commission shall consider all relevant
132 factors, including whether such allocation is just, reasonable,
133 and fairly balances the interests of other customers, the
134 utility, and the customer receiving the special rate.

CHAPTER 168

(Com. Sub. for S. B. 614 - By Senators Unger and Snyder)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §24-2-11a of the Code of West Virginia, 1931, as amended, relating to Public Service Commission approval of the construction of high voltage transmission lines; requiring applicant to notify owners of surface real estate that lie within the preferred corridor of the proposed transmission line; and requiring the commission to act in the best interest of West Virginia customers and its citizens.

Be it enacted by the Legislature of West Virginia:

That §24-2-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11a. Requirement for certificate of public convenience and necessity before beginning construction of high voltage transmission line; contents of application; notice; hearing; criteria for granting or denying certificate; regulations.

1 (a) No public utility, person or corporation may begin
2 construction of a high voltage transmission line of two
3 hundred thousand volts or over, which line is not an ordinary
4 extension of an existing system in the usual course of
5 business as defined by the Public Service Commission,
6 unless and until it or he or she has obtained from the Public
7 Service Commission a certificate of public convenience and
8 necessity approving the construction and proposed location
9 of the transmission line.

10 (b) The application for the certificate shall be in the form
11 the commission prescribes and shall contain:

12 (1) A description, in such detail as the commission
13 prescribes, of the location and type of line facilities which the
14 applicant proposes to construct;

15 (2) A statement justifying the need for the facilities;

16 (3) A statement of the environmental impact of the line
17 facilities; and

18 (4) Other information the applicant considers relevant or
19 the commission requires.

(c) Upon the filing of the application, the applicant shall publish, in the form the commission directs, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for the publication to be each county in which any portion of the proposed transmission line is to be constructed, a notice of the filing of the application and that the commission may approve the application unless within fifteen days after completion of publication a written request for a hearing on the application has been received by the commission from a person or persons alleging that the proposed transmission line or its location is against the public interest. If the request is timely received, the commission shall set the matter for hearing on a date within sixty days from completion of the publication, and shall require the applicant to publish notice of the time and place of hearing in the same manner as is required for the publication of notice of the filing of the application. At least thirty business days before the deadline set by the Public Service Commission to file a petition to intervene with regard to the application, the applicant shall serve notice by certified mail to all owners of surface real estate that lie within the preferred corridor of the proposed transmission line. Notice received by a named owner who is the recipient of record of the most recent tax bill that has been issued by the county sheriff's office for a parcel of land at the time of the filing of the application is sufficient notice regarding that parcel for purposes of this subsection.

(d) Within sixty days after the filing of the application, or if hearing is held on the application, within ninety days after final submission on oral argument or brief, the commission may approve the application if it finds that the proposed transmission line:

(1) Will economically, adequately and reliably contribute to meeting the present and anticipated requirements for

electric power of the customers served by the applicant or is necessary and desirable for present and anticipated reliability of service for electric power for its service area or region;

(2) Will be in the best interest of West Virginia customers and its citizens; and

(3) Will result in an acceptable balance between reasonable power needs and reasonable environmental factors.

(e) The commission may impose conditions upon its approval of the application, or modify the applicant's proposal, to achieve an acceptable balance between reasonable power needs and reasonable environmental factors.

(f) The provisions of this section do not apply to the construction of line facilities which will be part of a transmission line for which any right-of-way has been acquired prior to January 1, 1973.

(g) The commission shall prescribe rules it considers proper for the administration and enforcement of the provisions of this section, which rules shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a of this code.

(h) Notwithstanding any other provision of the law to the contrary, the commission shall determine, in its discretion, which transmission line or lines crossing above the Ohio River must be marked to be made visible to airborne traffic flying in any area where the lines exist, and shall promulgate rules requiring that all public utilities or persons who install or maintain the lines make the necessary markings.

CHAPTER 169

(H. B. 4582 - By Delegates Campbell, Guthrie, Hatfield, Phillips, M. Poling, Kominar, White, Craig, Marshall, Spencer and Mahan)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §5A-3-14, §5A-3-21, §5A-3-22, §5A-3-23, §5A-3-24, §5A-3-25, §5A-3-26, §5A-3-37a, §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-41, §5A-3-42, §5A-3-54, §5A-3-55 and §5A-3-55a of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-1, §5A-3-2, §5A-3-3, §5A-3-4, §5A-3-12, §5A-3-18, §5A-3-36 and §5A-3-37 of said code; and to amend said code by adding thereto a new section, designated §5A-3-59, relating to the functions of the purchasing director; procurement process; exempting certain entities from the Division of Purchasing; clarifying that the judicial branch is exempt from the Division of Purchasing; documentation of inventory; transportation of surplus property; providing resident vendor preference to certified small, women and minority-owned businesses; providing definitions; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §5A-3-14, §5A-3-21, §5A-3-22, §5A-3-23, §5A-3-24, §5A-3-25, §5A-3-26, §5A-3-37a, §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-41, §5A-3-42, §5A-3-54, §5A-3-55 and §5A-3-55a of the Code of West Virginia, 1931, as amended, be repealed; that §5A-3-

1, §5A-3-2, §5A-3-3, §5A-3-4, §5A-3-12, §5A-3-18, §5A-3-36 and §5A-3-37 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5A-3-59, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.
§5A-3-2. Books and records of director.
§5A-3-3. Powers and duties of director of purchasing.
§5A-3-4. Rules of director.
§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false certificates; penalties.
§5A-3-18. Substituting for commodity bearing particular trade name or brand.
§5A-3-36. Inventory of removable property.
§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.
§5A-3-59. Small, women and minority-owned businesses.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued for the purpose of establishing centralized offices to provide purchasing, and travel services to the various state agencies.

(b) The director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner, and to purchases of textbooks for the State Board of Education.

§5A-3-2. Books and records of director.

The director shall keep accurate books, accounts and records of all transactions of his or her division, and such books, accounts and records shall be public records and shall at all proper times be available for inspection by any taxpayer of the state.

§5A-3-3. Powers and duties of director of purchasing.

The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:

(1) Direct the activities and employees of the Purchasing Division;

(2) Ensure that the purchase of or contract for commodities shall be based, whenever possible, on competitive bid;

(3) Purchase or contract for, in the name of the state, the commodities and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

(5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided, as the director deems advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve such contracts as to form: *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation: *Provided, however*, That the provisions of this subdivision do not apply in any respect whatever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision; and

(10) Assure that the specifications and commodity descriptions in all "requests for quotations" are prepared so as to permit all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that

any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity having different specifications or quality or in different quantity can be bought, the director may rewrite the "requests for quotations" and the matter shall be rebid.

§5A-3-4. Rules of director.

(a) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to:

(1) Authorize a spending unit to purchase specified commodities directly and prescribe the manner in which such purchases shall be made;

(2) Authorize, in writing, a spending unit to purchase commodities in the open market for immediate delivery in emergencies, define emergencies and prescribe the manner in which such purchases shall be made and reported to the director;

(3) Prescribe the manner in which commodities shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates of commodities, the future period which they are to cover, the form in which they shall be submitted and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(6) Prescribe the amount and type of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of $125 per fiscal year nor shall such fee be charged to persons seeking only reimbursement from a spending unit;

(8) Prescribe that each state contract entered into by the Purchasing Division shall contain provisions for liquidated damages, remedies or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor, as determined by the director;

(9) Prescribe contract management procedures for all state contracts except government construction contracts including, but not limited to, those set forth in article twenty-two, chapter five of this code;

(10) Prescribe procedures by which oversight is provided to actively monitor spending unit purchases, including, but not limited to, all technology and software commodities and contractual services exceeding $1 million, approval of change orders and final acceptance by the spending units;

(11) Prescribe that each state contract entered into by the Purchasing Division contain provisions for the cancellation of the contract upon thirty days' notice to the vendor;

(12) Prescribe procedures for selling surplus commodities to the highest bidder by means of an Internet auction site;

(13) Provide such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article; and

(14) Prescribe procedures for encumbering purchase orders to ensure that the proper account may be encumbered before sending purchase orders to vendors.

(b) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to prescribe qualifications to be met by any person who is to be employed in the Purchasing Division as a state buyer. The rules must provide that a person may not be employed as a state buyer unless he or she at the time of employment either is:

(1) A graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

Persons serving as state buyers are subject to the provisions of article six, chapter twenty-nine of this code.

§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false certificates; penalties.

(a) The director may not accept any bid received from any vendor unless the vendor has paid the annual fee specified in section four of this article and has filed with the director a certificate of the vendor or the certificate of a member of the vendor's firm or, if the vendor is a corporation, the certificate of an officer, director or managing agent of the corporation, disclosing the following information:

(1) If the vendor is an individual, his or her name and city and state of residence and business address, and, if he or she has associates or partners sharing in his business, their names and city and state of residence and business addresses;

(2) If the vendor is a firm, the name and city and state of residence and business address of each member, partner or associate of the firm;

(3) If the vendor is a corporation created under the laws of this state or authorized to do business in this state, the name and business address of the corporation; the names and city and state of residence and business addresses of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and city and state of residence and business addresses of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof;

(4) A statement of whether the vendor is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing the representation shall be attached to the certificate or whether the vendor is doing business as another entity;

(5) The vendor's latest Dun & Bradstreet number and rating, if there is any rating as to the vendor;

(6) A list of one or more banking institution, if such institution is available, to serve as references for the vendor; and

(7) The vendor's tax identification number.

(b) Whenever a change occurs in the information submitted as required, the change shall be reported immediately in the same manner as required in the original disclosure certificate.

(c) The certificate and information received by the director shall be public record.

(d) The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

(e) Any person who submits a false certificate or who knowingly files or causes to be filed with the director, a certificate containing a false statement of a material fact or omitting any material fact, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, and, in the discretion of the court, confined in jail not more than one year. An individual convicted of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this state, or serve as a juror.

§5A-3-18. Substituting for commodity bearing particular trade name or brand.

If a spending unit requests the purchase of a commodity bearing a particular trade name or brand, the director may substitute a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted standard specifications and can be obtained at an equal or lower price.

§5A-3-36. Inventory of removable property.

The director has the power and duty to make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of purchase, the price paid for the property therein described and the disposition thereof.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.

1 (a) Effective beginning July 1, 1992, in any instance that
2 a purchase of commodities or printing by the director or by
3 a state department is required under the provisions of this
4 article to be made upon competitive bids, the successful bid
5 shall be determined as provided in this section. The
6 Secretary of the Department of Revenue shall promulgate
7 any rules necessary to: (i) Determine that vendors have met
8 the residence requirements described in this section; (ii)
9 establish the procedure for vendors to certify the residency
10 requirements at the time of submitting their bids; (iii)
11 establish a procedure to audit bids which make a claim for
12 preference permitted by this section and to reject noncomplying
13 bids; and (iv) otherwise accomplish the objectives of this
14 section. In prescribing the rules, the secretary shall use a
15 strict construction of the residence requirements set forth in
16 this section. For purposes of this section, a successful bid
17 shall be determined and accepted as follows:

18 (1) From an individual resident vendor who has resided
19 in West Virginia continuously for the four years immediately
20 preceding the date on which the bid is submitted or from a
21 partnership, association, corporation resident vendor, or from
22 a corporation nonresident vendor which has an affiliate or
23 subsidiary which employs a minimum of one hundred state
24 residents and which has maintained its headquarters or
25 principal place of business within West Virginia continuously
26 for four years immediately preceding the date on which the
27 bid is submitted, if the vendor's bid does not exceed the
28 lowest qualified bid from a nonresident vendor by more than
29 two and one-half percent of the latter bid, and if the vendor
30 has made written claim for the preference at the time the bid
31 was submitted: *Provided*, That for purposes of this
32 subdivision, any partnership, association or corporation

resident vendor of this state, which does not meet the requirements of this subdivision solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this subdivision, including the continuous four-year residency requirement: *Provided, however*, That the Secretary of the Department of Revenue shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the eighty percent ownership requirement; or

(2) From a resident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(3) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or subsidiary's

employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(5) From an individual resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(6) From a resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three

and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(7) Notwithstanding any provisions of subdivisions (1), (2), (3), (4), (5) or (6) of this subsection to the contrary, if any nonresident vendor that is bidding on the purchase of commodities or printing by the director or by a state department is also certified as a small, women or minority-owned business pursuant to section fifty-nine of this article, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subsection.

(b) If the Secretary of the Department of Revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the project.

(c) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting

any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

(d) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

(e) If any provision or clause of this section or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(f) This section may be cited as the "Jobs for West Virginians Act of 1990."

§5A-3-59. Small, women and minority-owned businesses.

(a) As used in this section:

(1) "Minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

(A) "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

(B) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia,

12 the Indian subcontinent or the Pacific Islands, including, but
13 not limited to, Japan, China, Vietnam, Samoa, Laos,
14 Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S.
15 territory of the Pacific, India, Pakistan, Bangladesh, or Sri
16 Lanka and who is regarded as such by the community of
17 which this person claims to be a part.

18 (C) "Hispanic American" means a person having origins
19 in any of the Spanish-speaking peoples of Mexico, South or
20 Central America, or the Caribbean Islands or other Spanish
21 or Portuguese cultures and who is regarded as such by the
22 community of which this person claims to be a part.

23 (D) "Native American" means a person having origins in
24 any of the original peoples of North America and who is
25 regarded as such by the community of which this person
26 claims to be a part or who is recognized by a tribal
27 organization.

28 (2) "Minority-owned business" means a business concern
29 that is at least fifty-one percent owned by one or more
30 minority individuals or in the case of a corporation,
31 partnership, or limited liability company or other entity, at
32 least fifty-one percent of the equity ownership interest in the
33 corporation, partnership, or limited liability company or other
34 entity is owned by one or more minority individuals and both
35 the management and daily business operations are controlled
36 by one or more minority individuals.

37 (3) "Small business" means a business, independently
38 owned or operated by one or more persons who are citizens
39 of the United States or noncitizens who are in full
40 compliance with United States immigration law, which,
41 together with affiliates, has two hundred fifty or fewer
42 employees, or average annual gross receipts of $10 million
43 or less averaged over the previous three years.

(4) "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city or town.

(5) "Women-owned business" means a business concern that is at least fifty-one percent owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least fifty-one percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law.

(b) State agencies shall submit annual progress reports on small, women and minority-owned business procurement to the Department of Administration in a form specified by the Department of Administration.

(c) The Department of Administration shall propose rules, for legislative approval pursuant to article three, chapter twenty-nine-a, to implement certification programs for small, women and minority-owned businesses. These certification programs shall deny certification to vendors from states that deny like certifications to West Virginia-based small, women or minority-owned businesses or that provide a preference for small, women or minority-owned businesses based in that state that is not available to West Virginia-based businesses. The rules shall:

(1) Establish minimum requirements for certification of small, women and minority-owned businesses;

(2) Provide a process for evaluating existing local, state, private sector and federal certification programs that meet the minimum requirements; and

(3) Mandate certification, without any additional paperwork or fee, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.

CHAPTER 170

(S. B. 527 - By Senator Unger)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §29-18-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-18-25, all relating to powers, duties and responsibilities of the West Virginia State Rail Authority; requiring the authority to establish a state plan for transportation and local rail services; and providing what the state plan may include.

Be it enacted by the Legislature of West Virginia:

That §29-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §29-18-25, all to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.
§29-18-25. State rail plan required.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia State Rail Authority is hereby granted,
2 has and may exercise all powers necessary or appropriate to
3 carry out and effectuate its corporate purpose.

4 (a) The authority may:

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 propose rules for
8 legislative approval in accordance with the provisions of
9 article three, chapter twenty-nine-a of this code to implement
10 and make effective its powers and duties.

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 ten, eleven
17 and sixteen of this article. Any actions against the authority
18 shall be brought in the circuit court of Kanawha County. The
19 location of the principal office of the authority shall be
20 determined by the Governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any
23 governmental agency or person and, in accordance with
24 chapter twenty-nine-a of this code, propose rules for
25 legislative approval and procedures for making such loans
26 and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to or contract for operation by a governmental agency or person, railroad projects and, in accordance with chapter twenty-nine-a of this code, propose legislative rules for the use of these projects.

(7) Make available the use or services of any railroad project to one or more persons, one or more governmental agencies or any combination thereof.

(8) Issue Railroad Maintenance Authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds for the purpose of paying any part of the cost of one or more railroad projects or parts thereof.

(9) Acquire, by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on terms and in the manner it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(11) (A) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in paragraph (B) of this subdivision.

(B) Make and enter into contracts and agreements to acquire rolling stock or equipment with a value of $500,000

59 or less exempt from the provisions of article three, chapter
60 five-a of this code.

61 The authority shall propose rules for legislative approval
62 in accordance with the provisions of article three, chapter
63 twenty-nine-a of this code which set forth the methods for
64 determining value of rolling stock or equipment to be
65 purchased in accordance with the provisions of paragraph (B)
66 of this subdivision.

67 (C) Where rolling stock, equipment or trackage of the
68 authority is in need of immediate maintenance, repair or
69 reconstruction in order to avoid a cessation of its operations,
70 economic loss, the inability to provide essential service to
71 customers or danger to authority personnel or the public, the
72 following requirements and procedures for entering into the
73 contract or agreement to remedy the condition shall be in lieu
74 of those provided in article three, chapter five-a of this code
75 or any legislative rule promulgated pursuant thereto:

76 (i) If the cost under the contract or agreement involves an
77 expenditure of more than $1,000, but $10,000 or less, the
78 authority shall award the contract to or enter into the
79 agreement with the lowest responsible bidder based upon at
80 least three oral bids made pursuant to the requirements of the
81 contract or agreement.

82 (ii) If the cost under the contract or agreement, other than
83 one for compensation for personal services, involves an
84 expenditure of more than $10,000, but $100,000 or less, the
85 authority shall award the contract to or enter into the
86 agreement with the lowest responsible bidder based upon at
87 least three bids, submitted to the authority in writing on
88 letterhead stationery, made pursuant to the requirements of
89 the contract or agreement.

90 (D) Notwithstanding any other provision of this code to
91 the contrary, a contract or lease for the operation of a railroad

project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a railroad project pursuant to section sixteen of this article is not subject to the provisions of article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto and the authority may enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of the railroad project.

(E) The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Appoint a director and employ managers, superintendents and other employees and retain or contract with consulting engineers, financial consultants, accountants, attorneys and other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article and fix the compensation or fees thereof. All expenses thereof are payable from the proceeds of Railroad Maintenance Authority revenue bonds or notes issued by the authority, from revenues and funds appropriated for this purpose by the Legislature or from grants from the federal government which may be used for such purpose.

(13) Receive and accept from any state or federal agency grants for or in aid of the construction of any railroad project or for research and development with respect to railroads and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which the grants and contributions are made.

(14) Engage in research and development with respect to railroads.

(15) Purchase fire and extended coverage and liability insurance for any railroad project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers' compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority has the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the Interstate Commerce Commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates or rentals that can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Administer and coordinate the state plan.

154 (5) Provide in the state plan for the equitable distribution
155 of federal rail service continuation subsidies among state,
156 local and regional transportation authorities.

157 (6) Promote, supervise and support safe, adequate and
158 efficient rail services.

159 (7) Employ sufficiently trained and qualified personnel
160 for these purposes.

161 (8) Maintain adequate programs of investigation,
162 research, promotion and development in connection with the
163 purposes and to provide for public participation therein.

164 (9) Provide satisfactory assurances on behalf of the state
165 that fiscal control and fund accounting procedures will be
166 adopted by the state necessary to assure proper disbursement
167 of and accounting for federal funds paid to the state as rail
168 service continuation subsidies.

169 (10) Comply with the regulations of the Secretary of
170 Transportation of the United States Department of
171 Transportation affecting federal rail service continuation
172 programs.

173 (11) Do all things otherwise necessary to maximize
174 federal assistance to the state under Title IV of the federal
175 Regional Rail Reorganization Act of 1973 and to qualify for
176 rail service continuation subsidies pursuant to the federal
177 Regional Rail Reorganization Act of 1973.

178 (c) Additional authority in regard to the Maryland Area
179 Regional Commuter.

180 (1) The Rail Authority is hereby granted, has and may
181 exercise all aforementioned powers necessary or appropriate
182 to coordinate all activities with the Maryland Transit

Administration to assure the continued operation of the Maryland Area Regional Commuter into the eastern panhandle of the state.

§29-18-25. State rail plan required.

(a) The authority shall establish a state plan for rail transportation and local rail services. In establishing and updating the plan, the authority may request input from freight and rail passenger associations.

(b) The plan shall, at a minimum, comply with the provisions of the laws of the United States and any regulations made thereunder relating to capturing and administering federal moneys for rail transportation, local rail services, and intermodal facilities as deemed necessary by the authority.

CHAPTER 171

(Com. Sub. for S. B. 577 - By Senator Kessler)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, all relating to raffles; revising the definition of "raffle"; providing for criminal and civil penalties, license suspension and revocation; and authorizing forfeiture and destruction of property.

Be it enacted by the Legislature of West Virginia:

That §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.
§47-21-20. Violation of provisions; crime; civil penalties; additional grounds for suspension or revocation.

§47-21-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) "Charitable or public service activity or endeavor"
3 means any bona fide activity or endeavor which directly
4 benefits a number of people by:

5 (1) Contributing to educational or religious purposes; or

6 (2) Relieving them from disease, distress, suffering,
7 constraint or the effects of poverty; or

8 (3) Increasing their comprehension of and devotion to the
9 principles upon which this nation was founded and to the
10 principles of good citizenship; or

11 (4) Making them aware of or educating them about issues
12 of public concern so long as the activity or endeavor is not
13 aimed at supporting or participating in the campaign of any
14 candidate for public office; or

15 (5) By lessening the burdens borne by government or
16 voluntarily supporting, augmenting or supplementing
17 services which government would normally render to the
18 people; or

19 (6) Providing or supporting nonprofit community
20 activities for youth, senior citizens or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities; or

(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the State Tax Commissioner.

(d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and shall be subject to the provisions of chapter sixty of this code.

(e) "Conduct" means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be deemed to include any moneys collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by sections eleven, thirteen and fifteen of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a) of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper tickets, not enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes. This subsection shall not be interpreted to prevent the use of:

(1) Hand cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia.

(2) A cash register for handling proceeds of sales and other ordinary cash handling and record keeping functions of a raffle licensee.

(3) Accounting and recordkeeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications, not used in the play of any game.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the "Internal Revenue Service" a determination letter that is

116 currently in effect stating that the organization is exempt
117 from federal income taxation under subsection 501(a) and
118 described in subsection 501(c)(3), 501(c)(4), 501(c)(8),
119 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue
120 Code of 1986, as amended; or is exempt from income taxes
121 under subsection 527(a) of said code.

§47-21-20. Violation of provisions; crime; civil penalties; additional grounds for suspension or revocation.

1 (a) Any person who knowingly violates any provisions of
2 this article, other than the provisions of sections eighteen or
3 nineteen, or subsection (b) of this section, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not
5 less than $100 nor more than $1,000; and, upon a second or
6 subsequent conviction thereof, shall be fined not less than
7 $100 nor more than $100,000 or confined in jail not more
8 than one year or both fined and confined.

9 (b) On and after July 1, 2010, any person licensed under
10 this article, or any person who operates a raffle without a
11 license under section three of this article, who is in
12 possession of any electronic or mechanical raffle ticket
13 dispenser, raffle ticket reader or other electronic or
14 mechanical device of whatever design or function, other than
15 those machines and apparatus allowed under subsection (n)
16 of section two of this article, that is used or designed to be
17 used as part of a licensed raffle is guilty of a felony and, upon
18 conviction thereof, shall be imprisoned in a state correctional
19 facility for a term of not less than one year nor more than
20 three years, and fined not less than $50,000 nor more than
21 $100,000, for each electronic or mechanical raffle ticket
22 dispenser, raffle ticket reader or other electronic or
23 mechanical device of whatever design or function, other than
24 those machines and apparatus allowed under subsection (n)
25 of section two of this article, in the person's actual or
26 constructive possession in this state. For a person other than
27 an individual, upon conviction, the fine may not be less than

$100,000 nor more than $500,000 for each video electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function in the person's actual or constructive possession in this state.

(c) A licensee may also have his or her license suspended or revoked for failure to comply with this article and may be required to forfeit the machines or devices to the Tax Commissioner for destruction.

(d) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of sections eighteen or nineteen of this article, or subsection (b) of this section, is subject to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed $10,000.

CHAPTER 172

(Com. Sub. for S. B. 427 - By Senators Tomblin (Mr. President), and Caruth) [By Request of the Executive]

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §17-16A-3, §17-16A-5, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-13a, §17-16A-19, §17-16A-26 and §17-16A-29 of the Code of West Virginia, 1931,

as amended; and to amend said code by adding thereto a new section, designated §17-16A-30, all relating to the West Virginia Parkways, Economic Development and Tourism Authority; renaming the West Virginia Parkways, Economic Development and Tourism Authority; reorganizing the membership of the authority; redefining terms; authorizing issuance of revenue bonds for parkway projects; prohibiting the authority from constructing new tourism projects or new economic development projects; clarifying and adding certain powers of the authority relating to parkway projects, tourism projects and economic development projects; clarifying certain powers of the Department of Transportation with respect to parkway projects; clarifying the power of the authority to reimburse the Department of Transportation for costs associated with parkway projects; clarifying certain powers of the authority with respect to real and personal property; clarifying the powers of the authority to fix and revise tolls for transit over certain parkway projects; requiring notice and public hearings prior to fixing initial rates or tolls on parkway projects; requiring an annual legislative audit of the Parkways Authority; requiring the Parkways Authority to provide certain information; requiring a discount program for purchasers of EZ Pass transponders prior to fixing initial rates or tolls on parkway projects; requiring the Parkways Authority to hold informational sessions concerning the discount program for purchasers of EZ Pass transponders; requiring EZ Pass transponders to be available without the payment of a security deposit; requiring refunds of paid security deposits through credits on statements; requiring county commission where a parkway project is located approve a parkways project by resolution; requiring Governor to establish a local committee; and providing duties of the local committee.

Be it enacted by the Legislature of West Virginia:

That §17-16A-3, §17-16A-5, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-13a, §17-16A-19, §17-16A-26 and §17-16A-29

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 §17-16A-30, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS AUTHORITY.

§17-16A-3. West Virginia Parkways Authority.
§17-16A-5. Definitions.
§17-16A-6. Parkways Authority's powers.
§17-16A-10. Parkway revenue bonds generally.
§17-16A-11. Parkway revenue bonds - West Virginia's Turnpike; related projects.
§17-16A-13a. Public notice and hearing requirements.
§17-16A-19. Preliminary expenses.
§17-16A-26. Annual report; audit.
§17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.
§17-16A-30. Coordination with county commission in counties where a parkway project may be located.

§17-16A-3. West Virginia Parkways Authority.

(a) The West Virginia Parkways, Economic Development and Tourism Authority is continued as an agency of the state, and commencing July 1, 2010, it shall be known as the West Virginia Parkways Authority. Any reference to the West Virginia Parkways, Economic Development and Tourism Authority within this code shall mean the West Virginia Parkways Authority.

(b) To be effective on July 1, 2010, the Governor shall appoint, by and with the advice and consent of the Senate:

(1) A public member representing the first congressional district for a term of five years; and

(2) A public member representing the first congressional district for a term of four years.

(c) The public member representing the third congressional district whose term expires in 2010 may be reappointed for a term of five years. The public member

17 representing the second congressional district whose term
18 expires in 2011 may be reappointed for a term of five years.

19 (d) To be effective on July 1, 2014, the Governor shall
20 appoint, by and with the advice and consent of the Senate, a
21 public member representing the second congressional district
22 for a term of five years to replace the public member
23 representing the third congressional district whose term
24 expires in 2014.

25 (e) To be effective on July 1, 2015, the Governor shall
26 appoint, by and with the advice and consent of the Senate, an
27 at-large public member for a term of five years to replace one
28 of the public members representing the third congressional
29 district whose terms expire in 2015.

30 (f) Commencing July 1, 2015, the Authority shall consist
31 of the following nine members:

32 (1) The Governor or a designee;

33 (2) The Secretary of the Department of Transportation or
34 a designee;

35 (3) Two public members representing the first
36 congressional district;

37 (4) Two public members representing the second
38 congressional district;

39 (5) Two public members representing the third
40 congressional district; and

41 (6) One at-large public member.

42 (g) After the initial appointment term, the term for the
43 public members shall be five years. All public members'

appointments shall be made by the Governor, by and with the advice and consent of the Senate.

(h) A public member may not serve more than two consecutive full five year terms. A public member may continue to serve until a successor has been appointed and has qualified.

(i) Each public member shall be a resident of this state during the appointment term and shall have been a qualified elector for a period of at least one year next preceding the appointment.

(j) A vacancy on the Authority shall be filled by appointment by the Governor for the unexpired term of the public member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(k) The Governor may remove any public member from the Authority for neglect of duty, incompetency or official misconduct.

(l) A public member immediately and automatically forfeits membership to the Authority if he or she is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.

(m) The Governor or designee shall serve as chair of the Authority. The Authority shall annually elect one of the public members as vice chair, and shall also elect a secretary and treasurer who need not be members of the Authority.

(n) The Governor shall appoint an Executive Director of the Authority, by and with the advice and consent of the Senate. The Executive Director serves at the will and pleasure of the Governor. The Executive Director is responsible for managing and administering the daily

functions of the Authority and performing all other functions necessary to the effective operation of the Authority. The compensation of the Executive Director is annually set by the Governor.

(o) The public members of the Authority are not entitled to compensation for their services, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(p) Five members of the Authority constitutes a quorum and the vote of a majority of members present shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(q) The Authority shall meet at least monthly. The chair or any five members of the Authority may call a special meeting: *Provided,* That notice shall be given to all members of the Authority not less than ten days prior to any special meeting.

(r) Prior to commencing his or her duties as a member of the Authority, each public member shall take and subscribe to the oath required by section five, article IV of the Constitution of this state.

(s) Before the issuance of any revenue bonds or revenue refunding bonds under the provisions of this article, each public member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars. The secretary and treasurer of the Authority shall execute a surety bond in the penal sum of fifty thousand dollars. Each surety bond shall be conditioned upon the faithful performance of

the duties of his or her office, shall be executed by a surety company authorized to transact business in West Virginia as a surety, shall be approved by the Governor and filed in the Office of the Secretary of State.

(t) All expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under this article and no liability or obligation shall be incurred by the Authority beyond the extent to which moneys shall have been provided under this article.

§17-16A-5. Definitions.

As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Cost" means the cost of construction, reconstruction, maintenance, improvement, repair and operation of the project, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Parkways Authority for such construction, reconstruction, maintenance, improvement and repair, the cost of all machinery, equipment, material and labor which are deemed essential thereto, the cost of improvements, the cost of financing charges, interest prior to and during construction and for one year after completion of construction, the cost of traffic estimates and of engineering, consultant, accounting, architects', trustees' and legal fees and expenses, plans, specifications, surveys, estimates of cost and of revenues, other costs and expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expenses and such other costs and expenses as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation or to the operation of the project. Any obligation or expense hereafter incurred by the

Department of Transportation with the approval of the Parkways Authority, regardless of whether the approval was authorized before or after the obligation or expense was incurred, for traffic surveys, borings, preparation of plans and specifications, and other engineering and consulting services in connection with the construction of a parkway project shall be regarded as a part of the cost of such project and may be reimbursed to the state out of the proceeds of parkway revenue bonds or revenue refunding bonds hereinafter authorized.

(b) "Department of Transportation" means the West Virginia Department of Transportation and each of its respective divisions and subordinate agencies, including, without limitation, the Division of Highways.

(c) "Economic development project" means any land or water site, structure, facility or equipment which the Parkways Authority may acquire, create, develop, construct, reconstruct, improve or repair under the provisions of this article to promote the agricultural, economic or industrial development of the state, together with all property rights, easements and interests which may be acquired by the Parkways Authority for the development, construction or operation of such project.

(d) "Expressway" means any road serving major intrastate and interstate travel, including federal interstate routes.

(e) "Feeder roads" means any road serving community to community travel or collects and feeds traffic to an expressway or turnpike.

(f) "Local service road" means any local arterialized and spur roads which provide land access and socioeconomic benefits to abutting properties.

(g) "Owner" means all individuals, co-partnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article.

(h) "Park and forest roads" means any road serving travel within state parks, state forests and public hunting and fishing areas.

(i) "Parkways Authority" or "Authority" means the West Virginia Parkways Authority, or if the Parkways Authority is abolished, the board, body, commission or authority succeeding to the principal functions thereof or to whom the powers given by this article to the Parkways Authority shall be given by law.

(j) "Parkway project" means any expressway, turnpike, bridge, tunnel, trunkline, feeder road, state local service road or park and forest road, or any portion or portions of any expressway, turnpike, trunkline, feeder road, state local service road or park and forest road, whether contiguous or noncontiguous to the West Virginia Turnpike or to any such portion or portions, which the Parkways Authority may acquire, construct, reconstruct, maintain, operate, improve or repair under the provisions of this article, which shall include for all purposes of this article, any acquisition, construction, reconstruction, maintenance, operation, improvement or repair that the authority may undertake by agreement with the Department of Transportation, or any expressway, turnpike or other road constructed by the West Virginia Turnpike Commission pursuant to the authority granted to it under the laws of this state prior to June 1, 1989, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations and administration, storage and other buildings, which the Parkways Authority may deem necessary for the operation of the parkway project, or which is used in the operation of a

parkway project constructed prior to June 1, 1989, together with all property, rights, easements and interests which may be acquired by the Parkways Authority for the construction or the operation of the parkway project or which were acquired in connection with or are used in the operation of a parkway project constructed prior to June 1, 1989.

(k) "Project" or "projects" means a parkway project, economic development project or tourism project, or any combination thereof.

(l) "Transportation secretary" means the Secretary of the State Department of Transportation.

(m) "Tourism project" means:

(1) Any park or tourist facility and attraction which the Parkways Authority may create, develop, construct, reconstruct, improve, maintain or repair under the provisions of this article, and shall include all roads, interchanges, entrance plazas, approaches, service stations, administration, storage and any other buildings or service stations, structures which the Parkways Authority may deem necessary for the operation of the tourism project, together with all property rights, easements and interests which may be acquired by the Parkways Authority for the construction or operation of the tourism project; and

(2) The construction, reconstruction, improvement, maintenance and repair of any park or tourist facility and attraction owned by the state as of June 1, 1989.

(n) "Tourist facility and attraction" mean cabins, lodges, recreational facilities, restaurants, and other revenue producing facilities, any land or water site, and any information center, visitors' center or rest stop which the Parkways Authority determines may improve, enhance or

contribute to the development of the tourism industry in the state.

(o) "Trunkline" means any road serving major city to city travel.

(p) "Turnpike" means the West Virginia Turnpike or any other toll road in the state.

(q) "West Virginia Turnpike Commission" means the State Turnpike Commission existing as of June 1, 1989.

(r) "West Virginia Turnpike" means the turnpike from Charleston to a point approximately one mile south of the intersection of Interstate 77 and U.S. Route 460 near Princeton in Mercer County, West Virginia, which road is presently a part of the federal interstate highway system.

§17-16A-6. Parkways Authority's powers.

(a) The Parkways Authority is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded. Any and all actions against the Parkways Authority shall be brought only in the county in which the principal office of the Parkways Authority is located;

(5) To construct, reconstruct, improve, maintain, repair and operate projects, at such locations within the state as may be determined by the Parkways Authority subject to the provisions of section thirty of this article: *Provided,* That after July 1, 2010, the Parkways Authority is prohibited from constructing new tourism projects or new economic development projects, but this prohibition shall not prevent the Authority from entering into lease agreements, development agreements or other agreements with private businesses or companies allowing and providing for such private businesses or companies to acquire, develop, construct and operate motels, lodging facilities or other businesses and business facilities on land owned by the Authority and located adjacent to the Tamarack project and facilities at Exit 45 of the West Virginia Turnpike;

(6) To issue parkway revenue bonds of the State of West Virginia, payable solely from revenues, for the purpose of paying all or any part of the cost of any one or more parkway projects, which costs may include, with respect to the West Virginia Turnpike, such funds as are necessary to repay to the State of West Virginia all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards;

(7) To issue parkway revenue refunding bonds of the State of West Virginia, payable solely from revenues, for any one or more of the following purposes:

(A) Refunding any bonds which shall have been issued under the provisions of this article or any predecessor thereof; and

(B) Repaying to the state all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards;

(8) To fix and revise, from time to time, tolls for transit over each parkway project constructed or improved by it, by the Department of Transportation, or by the West Virginia Turnpike Commission;

(9) To fix and revise, rents, fees or other charges, of whatever kind or character, for the use of each tourism project or economic development project constructed by it or for the use of any building, structure or facility constructed by it in connection with a parkway project;

(10) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(11) To acquire in the name of the state by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests, as it may deem necessary for carrying out the provisions of this article. No compensation shall be paid for public lands, playgrounds, parks, parkways or reservations so taken, and all public property damaged in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable;

(12) To designate the locations, and establish, limit and control such points of ingress to and egress from each project as may be necessary or desirable in the judgment of the Parkways Authority to ensure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(13) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and

the execution of its powers under this article, and to employ consulting engineers, attorneys, accountants, architects, construction and financial experts, trustees, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation. All such expenses shall be payable solely from the proceeds of parkway revenue bonds or parkway revenue refunding bonds issued under the provisions of this article, tolls or from revenues;

(14) To make and enter into all contracts, agreements or other arrangements with any agency, department, division, board, bureau, commission, authority or other governmental unit of the state to operate, maintain, or repair any project;

(15) To receive and accept from any federal agency grants for or in aid of the construction of any project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(16) To investigate and, if feasible, develop and implement a "single fee" program which would produce on an annual basis a sum of money equal to the total toll revenue received from all West Virginia drivers on West Virginia toll roads during the Authority's preceding fiscal year, divided into at least three classes based upon usage, size and number of axles. Said sum, plus an amount necessary to cover the expected costs of such program, shall be produced by adding to either the annual cost of vehicle registration or of vehicle inspection a single fee equal to the proportionate share of that vehicle owner of the total toll revenue needed to be produced from all vehicles within that class. A vehicle for which such fee has been paid shall be entitled to traverse all toll roads within the state without stopping to pay individual tolls during the effective period of said registration or said

inspection: *Provided,* That if the single fee proposed to be charged under said program exceeds the standard round trip toll for that vehicle over the entire length of the West Virginia Turnpike, the Authority shall not implement such program without the prior approval of both Houses of the Legislature: *Provided, however*, That any such program shall also include comparable provisions which would allow vehicles registered in other states to traverse West Virginia toll roads in like fashion to West Virginia vehicles as set forth in this section upon the payment of a single fee for each and every vehicle registered in such state, in accordance with the same classification system adopted for West Virginia vehicles.

(17) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article; and

(18) To file the necessary petition or petitions pursuant to Title 11, United States Code, Sec. 401 (being section 81 of the Act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended) and to prosecute to completion all proceedings permitted by Title 11, United States Code, Secs. 401-403 (being sections 81 to 83, inclusive, of said Act of Congress). The State of West Virginia hereby consents to the application of said Title 11, United States Code, Secs. 401-403, to the Parkways Authority.

(b) Nothing in this article shall be construed to prohibit the issuance of parkway revenue refunding bonds in a common plan of financing with the issuance of parkway revenue bonds.

§17-16A-10. Parkway revenue bonds generally.

(a) The Parkways Authority is authorized to provide by resolution for the issuance of parkway revenue bonds of the

state for the purpose of paying all or any part of the cost of one or more parkway projects: *Provided,* That this section shall not be construed as authorizing the issuance of parkway revenue bonds for the purpose of paying the cost of the West Virginia Turnpike, which parkway revenue bonds may be issued only as authorized under section eleven of this article. The principal of and the interest on bonds shall be payable solely from the funds provided for payment.

(b) The bonds of each issue shall be dated, shall bear interest at a rate as may be determined by the Parkways Authority in its sole discretion, shall mature at a time not exceeding forty years from their date or of issue as may be determined by the Parkways Authority, and may be made redeemable before maturity, at the option of the Parkways Authority at a price and under the terms and conditions as may be fixed by the Parkways Authority prior to the issuance of the bonds.

(c) The Parkways Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the state.

(d) The bonds shall be executed by manual or facsimile signature by the chair of the Parkways Authority, and the official seal of the Parkways Authority shall be affixed to or printed on each bond, and attested, manually or by facsimile signature, by the secretary and treasurer of the Parkways Authority. Any coupons attached to any bond shall bear the manual or facsimile signature of the chair of the Parkways Authority.

(e) In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature

or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. In case the seal of the Parkways Authority has been changed after a facsimile has been imprinted on the bonds, then the facsimile seal will continue to be sufficient for all purposes.

(f) All bonds issued under the provisions of this article shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or in registered form, or both, as the Parkways Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the recorders into coupon bonds of any bonds registered as to both principal and interest.

(g) The Parkways Authority may sell the bonds at a public or private sale at a price it determines to be in the best interests of the state.

(h) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the parkway project or parkway projects for which the bonds were issued, and shall be disbursed in a manner consistent with the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(i) If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, then additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued.

(j) If the proceeds of the bonds of any issue exceed the cost of the parkway project or parkway projects for which the bonds were issued, then the surplus shall be deposited to the credit of the sinking fund for the bonds.

(k) Prior to the preparation of definitive bonds, the Parkways Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Parkways Authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(l) Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state in accordance with this article: *Provided,* That the Parkways Authority shall comply with the provisions of section twenty-eight, article one, chapter five of this code.

§17-16A-11. Parkway revenue bonds — West Virginia Turnpike; related projects.

(a) The Parkways Authority is authorized to provide by resolution, at one time or from time to time, for the issuance of parkway revenue bonds of the state in an aggregate outstanding principal amount not to exceed, from time to time, $200 million for the purpose of paying:

(1) All or any part of the cost of the West Virginia Turnpike, which may include, but not be limited to, an amount equal to the state funds used to upgrade the West Virginia Turnpike to federal interstate standards;

(2) All or any part of the cost of any one or more parkway projects that involve improvements to or enhancements of the West Virginia Turnpike, including,

13 without limitation, lane-widening on the West Virginia
14 Turnpike and that are or have been recommended by the
15 Parkways Authority's traffic engineers or consulting
16 engineers or by both of them prior to the issuance of parkway
17 revenue bonds for the project or projects; and

18 (3) To the extent permitted by federal law, all or any part
19 of the cost of any related parkway project.

20 (b) For purposes of this section only, a "related parkway
21 project" means any information center, visitors' center or rest
22 stop, or any combination thereof, and any expressway,
23 turnpike, trunkline, feeder road, state local service road or
24 park and forest road which connects to or intersects with the
25 West Virginia Turnpike and is located within seventy-five
26 miles of the turnpike as it existed on June 1, 1989, or any
27 subsequent expressway, trunkline, feeder road, state local
28 service road or park and forest road constructed pursuant to
29 this article: *Provided,* That nothing in this section shall be
30 construed as prohibiting the Parkways Authority from issuing
31 parkway revenue bonds pursuant to section ten of this article
32 for the purpose of paying all or any part of the cost of any
33 related parkway project: *Provided, however,* That none of the
34 proceeds of the issuance of parkway revenue bonds under
35 this section shall be used to pay all or any part of the cost of
36 any economic development project, except as provided in
37 section twenty-three of this article: *Provided further,* That
38 nothing in this section shall be construed as prohibiting the
39 Parkways Authority from issuing additional parkway revenue
40 bonds to the extent permitted by applicable federal law for
41 the purpose of constructing, maintaining and operating any
42 highway constructed, in whole or in part, with money
43 obtained from the Appalachian Regional Commission as long
44 as the highway connects to the West Virginia Turnpike as it
45 existed on June 1, 1989: *And provided further,* That, for
46 purposes of this section, in determining the amount of bonds
47 outstanding, from time to time, within the meaning of this

section: Original par amount or original stated principal amount at the time of issuance of bonds shall be used to determine the principal amount of bonds outstanding, except that the amount of parkway revenue bonds outstanding under this section may not include any bonds that have been retired through payment, defeased through the deposit of funds irrevocably set aside for payment or otherwise refunded so that they are no longer secured by toll revenues of the West Virginia Turnpike: *And provided further,* That the authorization to issue bonds under this section is in addition to the authorization and power to issue bonds under any other section of this code: *And provided further,* That, without limitation of the authorized purposes for which parkway revenue bonds are otherwise permitted to be issued under this section, and without increasing the maximum principal par amount of parkway revenue bonds permitted to be outstanding, from time to time, under this section, the Authority is specifically authorized by this section to issue, at one time or from time to time, by resolution or resolutions under this section, parkway revenue bonds under this section for the purpose of paying all or any part of the cost of one or more parkway projects that:

(1) Consist of enhancements or improvements to the West Virginia Turnpike, including, without limitation, projects involving lane widening, resurfacing, surface replacement, bridge replacement, bridge improvements and enhancements, other bridge work, drainage system improvements and enhancements, drainage system replacements, safety improvements and enhancements, and traffic flow improvements and enhancements; and

(2) Have been recommended by the Authority's consulting engineers or traffic engineers, or both, prior to the issuance of the bonds.

(c) Except as otherwise specifically provided in this section, the issuance of parkway revenue bonds pursuant to

83 this section, the maturities and other details of the bonds, the
84 rights of the holders of the bonds, and the rights, duties and
85 obligations of the Parkways Authority in respect of the bonds
86 shall be governed by the provisions of this article insofar as
87 the provisions are applicable.

88 (d) Notwithstanding any other provision of this code to
89 the contrary, the Authority may not issue parkway revenue
90 bonds under this section for projects on the West Virginia
91 Turnpike after June 30, 2010: *Provided,* That the authority
92 may issue revenue refunding bonds pursuant to sections
93 twenty-one and twenty-two of this article.

§17-16A-13a. Public notice and hearing requirements.

1 (a) Notwithstanding any provision of the law to the
2 contrary, on and after July 1, 2010, the Parkways Authority
3 is authorized after prior public notice and hearing, as set forth
4 in this section, to:

5 (1) Fix initial rates, tolls or charges along any portion of
6 a parkway project, or approve any proposal or contract that
7 would require the Parkways Authority to fix any initial rates,
8 tolls or charges along any portion of a parkway project;

9 (2) Increase any rates, tolls or charges along any portion
10 of the parkway project, or approve any proposal or contract
11 that would result in or require an increase in any rates or tolls
12 along any portion of the parkway project;

13 (3) Issue any refunding bond pursuant to sections
14 twenty-one and twenty-two of this article which would
15 require the Parkways Authority to increase rates, tolls or
16 charges;

17 (4) Approve any contract or project which would require
18 or result in an increase in the rates, tolls or charges along any
19 portion of the parkway project; or

(5) Take any other action which would require or result in an increase in the rates, tolls or charges along any portion of the parkway project.

(b) The Parkways Authority shall publish notice of any proposed contract, project or bond which would require the Parkways Authority to fix any initial toll rates or charges, result in an increase of any toll rates or charges or extend any bond repayment obligation, along with the associated initial rate, rate increase or revised bond repayment period, by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, published and of general circulation in each county which borders the parkway project or proposed parkway project affected by the proposed contract, project or bond.

(c) Once notice has been provided in accordance with the provisions of this section, the Parkways Authority shall conduct a public hearing in each county which borders the parkway project or proposed parkway project affected by the proposed contract, project or bond, and any citizen may communicate by writing to the Parkways Authority his or her opposition to or approval of such proposal, initial rate or toll, rate or toll increase or amended bond terms. The public notice and written public comment period shall be conducted not less than forty-five days from the publication of the notice and the affected public must be provided with at least twenty days' notice of each scheduled public hearing.

(d) All studies, records, documents and other materials which were considered by the Parkways Authority before recommending the approval of any such project or recommending the adoption of any such initial rate or increase shall be made available for public inspection for a period of at least twenty days prior to the scheduled hearing at a convenient location in each county where a public hearing is held.

(e) At the conclusion of all required public hearings, the Parkways Authority shall render a final decision which shall include written findings of fact supporting its final decision on any proposed project which would result in or require initial rates, a rate increase, or prior to finally approving any proposed initial rate or toll or rate or toll increase, and such required findings and conclusions must reference and give due consideration to the public comments and additional evidence offered during the public hearings.

(f) On and after July 1, 2010, any final action taken by the Parkways Authority to approve or implement any proposed initial rate, rate increase, contract or project which would require or result in a proposed initial rate or toll or a proposed increase of any rate or tolls along any portion of the parkway project without first satisfying the public notice and hearing requirements of this section, shall be null and void.

§17-16A-19. Preliminary expenses.

(a) The Secretary of the Department of Transportation is authorized in his or her discretion to expend out of any funds available for the purpose, such moneys as may be necessary for the study of any parkway, economic development or tourism project or projects and to use the Department of Transportation's engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as he or she may deem expedient.

(b) All such expenses incurred by the Department of Transportation prior to the issuance of parkway revenue bonds or revenue refunding bonds under the provisions of this article shall be paid by the Department of Transportation and charged to the appropriate project or projects, and the Department of Transportation shall keep proper records and accounts showing each amount so charged.

(c) Upon the sale of parkway revenue bonds or revenue refunding bonds for any project or projects, the funds so expended by the Department of Transportation in connection with such project or projects may be reimbursed to the Department of Transportation from the proceeds of such bonds.

§17-16A-26. Annual report; audit.

(a) Annually, the Parkways Authority shall prepare and provide to each member of the West Virginia Legislature who so requests, an annual report detailing the financial condition and operations of the Parkways Authority. The Parkways Authority shall provide to the Joint Committee on Government and Finance any financial statements that are required under any trust agreement to which the Parkways Authority is a party.

(b) Annually, the Parkways Authority shall file with the Legislative Auditor's office a full and complete accounting of its activities, including the collection of all revenues, expenditures, liabilities, assets, bonds and disbursement of funds. The Legislative Auditor shall conduct an annual audit of the information provided by the Parkways Authority and the audit report of the Legislative Auditor shall be provided to each member of the Legislature requesting a copy.

§17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.

(a) The Parkways Authority is hereby authorized to create a discount program for purchasers of West Virginia EZ Pass transponders: *Provided,* That prior to the fixation of any initial rates, tolls or charges or any increase in any rates, tolls or charges along any portion of the parkway project, the Parkways Authority shall create a discount program for purchasers of West Virginia EZ Pass transponders. Any

8 discount program created pursuant to this section shall
9 provide discounts for each class of motor vehicles.

10 (b) The Authority shall provide public notice and hold
11 public hearings on any proposed discount program as
12 required in section thirteen-a of this article prior to
13 implementation of such program.

14 (c) Annually, the Parkways Authority shall hold at least
15 one public informational session in each of the following
16 counties: Kanawha, Fayette, Raleigh and Mercer counties.
17 The Authority is to distribute educational materials and other
18 information concerning the discount program for purchasers
19 of West Virginia EZ Pass transponders described in this
20 section.

21 (d) Upon the effective date of the amendments to this
22 section enacted during the regular session of the Legislature
23 in the year 2010, the Authority shall make available West
24 Virginia EZ Pass transponders to the public without the
25 payment of any monetary security deposit. The Authority
26 shall credit any individual that has paid a security deposit for
27 a West Virginia EZ Pass transponder prior to July 1, 2010, on
28 the individual's next billing statement.

29 (e) For purposes of this section, a "West Virginia EZ Pass
30 transponder" means a device sold by the Parkways Authority
31 which allows the purchaser to attach the device to his or her
32 motor vehicle and travel through a Parkways toll facility and
33 be billed for such travel by the Authority.

§17-16A-30. Coordination with county commission in counties where a parkway project may be located.

1 Once a parkway project is identified by the Authority, the
2 Governor shall appoint, with the advice and consent of the
3 Senate, two persons from each county where the parkway

4 project is located to serve on a local committee to provide
5 recommendations and suggestions to the Authority on all
6 matters regarding the local identified project. The local
7 committee shall also report any of its findings to the county
8 commission or county commissions of the counties in which
9 the parkway project is located. Prior to any final approval of
10 a parkway project, the county commissions of the counties in
11 which a parkway project is located shall by resolution
12 approve the parkway project.

CHAPTER 173

(Com. Sub. for S. B. 354 - By Senators Kessler and Unger)

[Passed March 8, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §17C-4-1, §17C-4-2, §17C-4-3, §17C-4-5, §17C-4-6, §17C-4-7, §17C-4-8, §17C-4-9, §17C-4-10, §17C-4-11, §17C-4-14, §17C-4-15 and §17C-4-16 of the Code of West Virginia, 1931, as amended, all relating to reporting crashes to a law-enforcement agency; updating certain terminology; increasing property damage notification threshold; setting penalties for certain crashes; updating law-enforcement reporting requirements; and changing responsibility for receiving reports and preparation of reports to the Division of Highways.

Be it enacted by the Legislature of West Virginia:

That §17C-4-1, §17C-4-2, §17C-4-3, §17C-4-5, §17C-4-6, §17C-4-7, §17C-4-8, §17C-4-9, §17C-4-10, §17C-4-11, §17C-4-14,

§17C-4-15 and §17C-4-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. CRASHES.

§17C-4-1. Crashes involving death or personal injuries.
§17C-4-2. Crashes involving damage to vehicle.
§17C-4-3. Duty to give information and render aid.
§17C-4-5. Duty upon striking fixtures upon a highway.
§17C-4-6. Immediate notification of crashes.
§17C-4-7. Reports of crashes.
§17C-4-8. When driver unable to report.
§17C-4-9. Crash report forms.
§17C-4-10. Penalty for failure to notify law enforcement.
§17C-4-11. Coroners to report on crash victims.
§17C-4-14. Division of Highways to tabulate and analyze crash reports.
§17C-4-15. Any incorporated city, town, etc., may require crash reports.
§17C-4-16. Crashes involving state and municipal property; reports to be provided.

*§17C-4-1. Crashes involving death or personal injuries.

(a) The driver of any vehicle involved in a crash resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close thereto as possible but shall then forthwith return to and shall remain at the scene of the crash until he or she has complied with the requirements of section three of this article: *Provided,* That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to an injured person as required by said section three. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person violating the provisions of subsection (a) of this section after being involved in a crash resulting in the death of any person is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a correctional facility for not more than three years or fined not more than $5,000, or both.

***CLERK'S NOTE:** This section was also amended by H. B. 4534 (Chapter 86) which passed subsequent to this act.

(c) Any person violating the provisions of subsection (a) of this section after being involved in a crash resulting in physical injury to any person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by confinement in a regional jail for not more than one year, or fined not more than $1,000, or both.

(d) The commissioner shall revoke the driver's license or permit to drive and any nonresident operating privilege of any person convicted pursuant to the provisions of this section for a period of one year.

§17C-4-2. Crashes involving damage to vehicle.

The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements of section three of this article. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of a misdemeanor and, subject to the penalties prescribed in section one, article eighteen of this chapter.

§17C-4-3. Duty to give information and render aid.

The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such crash

9 reasonable assistance, including the carrying, or the making
10 arrangements for the carrying of such person to a physician,
11 surgeon or hospital for medical or surgical treatment if it is
12 apparent that such treatment is necessary or if such carrying
13 is requested by the injured person.

§17C-4-5. Duty upon striking fixtures upon a highway.

1 The driver of any vehicle involved in a crash resulting
2 only in damage to fixtures or other property legally upon or
3 adjacent to a highway shall take reasonable steps to locate
4 and notify the owner or person in charge of such property of
5 such fact and of his or her name and address and of the
6 registration number of the vehicle he or she is driving and
7 shall upon request and if available exhibit his or her driver's
8 license and shall make report of such crash when and as
9 required in section seven of this article. Any person failing
10 to make the notification required by this section is guilty of
11 a misdemeanor and, upon conviction, shall be fined not more
12 than $150.

§17C-4-6. Immediate notification of crashes.

1 The driver of a vehicle involved in a crash resulting in
2 injury to or death of any person or total property damage to
3 an apparent extent of $1,000 or more shall immediately by
4 the quickest means of communication, give notice of such
5 crash to the local police department if such crash occurs
6 within a municipality, otherwise to the office of the county
7 sheriff or the nearest office of the West Virginia State Police.

§17C-4-7. Reports of crashes.

1 (a) Every law-enforcement officer who, in the regular
2 course of duty, investigates a motor vehicle crash occurring
3 on the public streets or highways of this state resulting in
4 bodily injury to or death of any person or total property

damage to an apparent extent of $1,000 or more shall, either at the time of and at the scene of the crash or thereafter by interviewing participants or witnesses, within twenty-four hours after completing such investigation, prepare report of such crash either electronically or in writing.

(b) The investigating law-enforcement officer shall submit the report electronically or in writing within twenty-four hours after completing the investigation to the Division of Highways in the form and manner approved by the Commissioner of Highways, the Superintendent of the West Virginia State Police and the Commissioner of Motor Vehicles. The Division of Highways shall supply electronic or paper copies of such form to police departments, sheriffs and other appropriate law-enforcement agencies.

(c) In the event that the investigating law-enforcement officer can not complete the investigation within ten days of the crash, he or she shall submit a preliminary report of the crash to the Division of Highways on the tenth day after the crash and submit the final report within twenty-four hours of completion of the investigation pursuant to subsection (b) of this section.

§17C-4-8. When driver unable to report.

Whenever the driver of a vehicle is physically incapable of making an immediate notification of a crash as required in section six of this article and there was another occupant in the vehicle at the time of the crash capable of making a notification, such occupant shall make or cause to be made said notification not made by the driver.

§17C-4-9. Crash report forms.

(a) The Division of Highways shall prepare and upon request supply to the State Police, municipal police

departments, sheriffs, Division of Natural Resources, and other suitable agencies or individuals, electronic or paper forms for crash reports required hereunder.

(b) The format of the crash reports shall provide sufficiently detailed information to disclose with reference to a traffic crash the cause, conditions then existing, and the persons and vehicles involved.

(c) Every crash report required to be made shall be made in the appropriate form provided by the Division of Highways and shall contain all of the information required therein unless not available.

(d) Every such report shall also contain information sufficient to enable the Commissioner of Motor Vehicles to determine whether the requirements for security upon motor vehicles is in effect in accordance with chapter seventeen-d of this code.

§17C-4-10. Penalty for failure to notify law enforcement.

The commissioner may suspend the driver's license or permit to drive and any nonresident operating privileges of any person failing to notify law enforcement of a crash as herein provided under section six of this article. Any person convicted of failing to notify law enforcement as required herein shall be punished as provided in section one, article eighteen of this chapter.

§17C-4-11. Coroners to report on crash victims.

Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the Division of Highways the death of any person within his or her jurisdiction during the preceding calendar month as the result of a traffic crash giving the name of the

6 victim, the date, time and place of the crash and the
7 circumstances relating thereto.

§17C-4-14. Division of Highways to tabulate and analyze crash reports.

1 The Division of Highways shall tabulate and may analyze
2 all crash reports and shall publish annually, or at more
3 frequent intervals, statistical information based thereon as to
4 the number and circumstances of traffic crashes.

§17C-4-15. Any incorporated city, town, etc., may require crash reports.

1 Any incorporated city, town, village or other municipality
2 may by ordinance require that the driver of a vehicle
3 involved in a crash shall file with a designated city
4 department a report of such crash. All such reports shall be
5 for the confidential use of the city department.

§17C-4-16. Crashes involving state and municipal property; reports to be provided.

1 Whenever a report of a motor vehicle crash prepared by
2 a member of the West Virginia State Police, conservation
3 officer of the Division of Natural Resources, a member of a
4 county sheriff's department or a municipal police officer, in
5 the regular course of their duties, indicates that as a result of
6 such crash damage has occurred to any bridge, sign, guardrail
7 or other property, exclusive of licensed motor vehicles, a
8 copy of such report shall, in the case of such property
9 belonging to the Division of Highways, be provided to the
10 Commissioner of the Division of Highways, and, in the case
11 of such property belonging to a municipality, be provided to
12 the mayor of that municipality. The copies of such reports
13 shall be provided to the commissioner or mayor, as
14 applicable, without cost to them.

CHAPTER 174

(Com. Sub. for H. B. 4223 - By Delegates Klempa, Hutchins, Schoen, Ferro, Hamilton, Ennis, Brown, Varner, Ellem, Pethtel and Caputo)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating generally to increasing the safety of school children that use school buses; increasing the penalties for overtaking and passing a school bus stopped for the purpose of receiving and discharging children; authorizing the mounting of cameras on school buses; and requesting an educational information campaign on school bus safety.

Be it enacted by the Legislature of West Virginia:

That §17C-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

1 (a) The driver of a vehicle, upon meeting or overtaking
2 from either direction any school bus which has stopped for

the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in section eight of this article, and the driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road or driveway: *Provided*, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than $150 or more than $500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a second violation of subsection (a), the driver shall be fined $500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation of subsection (a), the driver shall be fined $500, and confined not less than twenty-four hours in jail but not more than six months.

(c) In addition to the penalties prescribed in subsections (b) of this section, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person so convicted:

(1) Of a first offense under subsection (b) of this section, for a period of thirty days;

(2) Of a second offense under subsection (b) of this section, for a period of ninety days; or

(3) Of a third or subsequent offense under subsection (b) of this section, for a period of one hundred and eighty days.

(d) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes serious bodily injury to any person other than the driver, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than three years and fined not less than $500 nor more than $2,000.

(e) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than ten years and fined not less than $1,000 nor more than $3,000.

(f) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings on the contract school bus indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.

(g) Every county board of education is hereby authorized to mount a camera on any school bus for the purpose of enforcing this section or for any other lawful purpose.

(h) To the extent that state, federal or other funds are available, the State Police shall conduct an information

68 campaign to educate drivers concerning the provisions of this
69 section and the importance of school bus safety.

70 (i) The State Board of Education shall promulgate a rule
71 in accordance with the provisions of article three-b, chapter
72 twenty-nine-a of this code governing the idling of school
73 buses.

CHAPTER 175

**(Com. Sub. for S. B. 649 -
By Senator Foster)**

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §62-1A-10 and §62-1A-11, all relating to search of motor vehicles by law-enforcement officers with consent; providing for the development of a standardized form of a written consent to search a motor vehicle with the permission of the vehicle operator; requiring written or audio recording of a vehicle operator's permission or consent to search of motor vehicles by law-enforcement officers when appropriate; providing exceptions; addressing the effect of an officer's failure to document oral or written consent; providing for the establishment of appropriate, forms, standards and criteria by the Governor's Committee on Crime, Delinquency and Corrections; requiring legislative and emergency rules; and establishing 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 two new sections, designated §62-1A-10 and §62-1A-11, all to read as follows:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-10. Motor vehicle searches.
§62-1A-11. Rules for certain evidence of consent to vehicle search.

§62-1A-10. Motor vehicle searches.

1 (a) A law-enforcement officer who stops a motor vehicle
2 for an alleged violation of a traffic misdemeanor law or
3 ordinance may not search the vehicle unless he or she:

4 (1) Has probable cause or another lawful basis for the
5 search;

6 (2) Obtains the written consent of the operator of the
7 vehicle on a form that complies with section eleven of this
8 article; or, alternatively,

9 (3) Obtains the oral consent of the operator of the vehicle
10 and ensures that the oral consent is evidenced by an audio
11 recording that complies with section eleven of this article.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, should a form meeting the requirement of
14 section eleven of this article or an audio recording device be
15 unavailable a handwritten consent executed by the vehicle
16 operator and meeting the consent requirements of section
17 eleven of this article will suffice.

18 (c) Notwithstanding the provisions of subsection (a) or
19 (b)of this section should a court find that the officer had a
20 reasonable suspicion of dangerousness to his or her safety
21 which precluded recordation of the consent the recordation
22 requirements of this section shall be found inapplicable.

23 (d) Failure to comply with the provisions of this section
24 shall not, standing alone, constitute proof that any consent to
25 search was involuntary.

26 (e) A finding by a court that the operator of a motor
27 vehicle voluntarily and verbally consented to a search of the
28 motor vehicle shall make the recordation requirements of this
29 section inapplicable.

30 (f) Nothing contained in this section shall be construed to
31 create a private cause of action.

32 (g) This section takes effect on January 1, 2011.

§62-1A-11. Rules for certain evidence of consent to vehicle search.

1 (a) To facilitate the implementation of section ten of this
2 article the Governor's Committee on Crime, Delinquency
3 and Corrections shall promulgate emergency and legislative
4 rules in accordance with article three, chapter twenty-nine-a
5 of this code to establish the requirements for:

6 (1) A form used to obtain the written consent of the
7 operator of a motor vehicle under section ten of this article;
8 and

9 (2) An audio recording used as evidence of the oral
10 consent of the operator of a motor vehicle under section ten
11 of this article.

12 (b) The form required under subsection (a) of this section
13 shall contain:

14 (1) A statement that the operator of the motor vehicle
15 fully understands that he or she may refuse to give the law-
16 enforcement officer consent to search the motor vehicle;

(2) A statement that the operator of the motor vehicle is freely and voluntarily giving the law-enforcement officer consent to search the motor vehicle;

(3) A statement that the operator of the motor vehicle may withdraw the consent at any time during the search;

(4) The time and date of the stop giving rise to the search;

(5) The make and the registration number of the vehicle to be searched; and

(6) The name of the law-enforcement officer seeking consent.

(c) The rules adopted under subdivision (2), subsection (a) of this section must require the audio recording to reflect an affirmative statement made by the operator that:

(1) The operator of the motor vehicle understands that the operator may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) The operator of the motor vehicle is voluntarily giving the law-enforcement officer consent to search the motor vehicle; and

(3) The operator of the motor vehicle was informed that he or she may withdraw the consent at any time during the search.

(d) The Governor's Committee on Crime, Delinquency and Corrections shall promulgate the emergency and legislative rules required by this section no later than December 31, 2010.

CHAPTER 176

**(Com. Sub. for S. B. 398 -
By Senator K. Facemyer)**

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §22-15A-2 and §22-15A-22 of the Code of West Virginia, 1931, as amended, relating to prohibiting disposal of certain items in landfills; prohibiting the disposal of covered electronic devices; requiring the Solid Waste Management Board to create a program for the proper handling of certain items; and requiring the secretary to promulgate a rule to implement and enforce the disposal program.

Be it enacted by the Legislature of West Virginia:

That §22-15A-2 and §22-15A-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. THE A. JAMES MANCHIN ENVIRONMENTAL ACTION PLAN.

§22-15A-2. Definitions.
§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

§22-15A-2. Definitions.

1 Unless the context clearly indicates a different meaning
2 or defined elsewhere in this chapter, as used in this article:

(1) "Beneficial use" means the use or reuse of whole waste tires or tire derived material which are reused in constructing retaining walls, rebuilding highway shoulders and subbase, building highway crash attenuation barriers and other civil engineering applications, feed hopper or watering troughs for livestock, other agricultural uses approved by the Department of Environmental Protection, playground equipment, boat or truck dock construction, house or building construction, go-cart, motorbike or race track barriers, recapping, alternative daily cover or similar types of beneficial applications: *Provided,* That waste tires may not be reused as fencing, as erosion control structures, along stream banks or river banks or reused in any manner where human health or the environment, as determined by the Secretary of the Department of Environmental Protection, is put at risk.

(2) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(3) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.

(4) "Computer" means a desktop, personal computer or laptop computer, including the computer monitor. Computer does not include a personal digital assistant device, computer peripheral devices such as a mouse or other similar pointing device, a printer or a detachable keyboard.

(5) "Court" means any circuit, magistrate or municipal court.

(6) "Covered electronic device" means a television, computer or video display device with a screen that is greater

than four inches measured diagonally. "Covered electronic device" does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial or medical equipment.

(7) "Department" means the Department of Environmental Protection.

(8) "Litter" means all waste material, including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, covered electronic devices, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(9) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the secretary's rules promulgated pursuant to subsection (e), section three of this article.

(10) "Manufacturer" means a person that is the brand owner of a covered electronic device or television sold or offered for sale in this state by any means, including transactions conducted through retail sales outlets, catalogs or the Internet.

(11) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

(12) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state or an area held open for unrestricted access by the general public.

(13) "Recyclable materials" means those materials that would otherwise become solid waste for disposal in a refuse disposal system and which may be collected, separated or processed and returned to the marketplace in the form of raw materials or products.

(14) "Remediate or remediation" means to remove all litter, solid waste and tires located above grade at a site: *Provided,* That remediation does not include clean up of hazardous waste.

(15) "Television" means any telecommunication system device that can receive moving pictures and sound broadcast over a distance and includes a television tuner or a video display device peripheral to a computer in which the display contains a television tuner.

(16) "Secretary" means the Secretary of the Department of Environmental Protection.

(17) "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen. A "video display device" may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, other image-projection technology or imaging display technologies.

(18) "Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable

for recapping, or other beneficial use because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(19) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

(20) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling and/or marketing.

(21) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

(22) "Yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that materials, which due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, are not yard waste: *Provided,* That the same or similar waste generated by commercial agricultural enterprises is excluded.

§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) It is unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia.

(b) It is unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the department's waste tire remediation projects or other collection efforts in accordance with the provisions of this article or the pollution prevention program and open dump program or other state-authorized remediation or clean up programs: *Provided,* That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or clean up program has determined there is no reasonable alternative available.

(c) It is unlawful to dispose of yard waste in a solid waste facility in West Virginia: *Provided,* That the prohibitions do not apply to a facility designed specifically to compost yard waste or otherwise recycle or reuse yard waste: *Provided, however,* That reasonable and necessary exceptions to the prohibitions may be included as part of the rules promulgated pursuant to subsection (f).

(d) Effective January 1, 2011, covered electronic devices, as defined in section two of this article, may not be disposed of in a solid waste landfill in West Virginia.

(e) The Solid Waste Management Board shall design a comprehensive program to provide for the proper handling of yard waste, lead-acid batteries, tires and covered electronic devices.

(f) The secretary shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement and enforce the program for yard waste, lead-acid batteries, tires and covered electronic devices designed pursuant to subsection (d).

(g) The secretary's rule shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

34 (1) Disposal in a publicly or privately operated
35 commercial or noncommercial composting facility;

36 (2) Disposal by composting on the property from which
37 domestic yard waste is generated or on adjoining property or
38 neighborhood property if consent is obtained from the owner
39 of the adjoining or neighborhood property;

40 (3) Disposal by open burning, where not prohibited; or

41 (4) Disposal in a publicly or privately operated landfill,
42 only where none of the foregoing options are available. The
43 manner of disposal shall only involve small quantities of
44 domestic yard waste generated only from the property of the
45 participating resident or tenant.

CHAPTER 177

(S. B. 635 - By Senator Prezioso)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §29-3-5 of the Code of West Virginia, 1931, as amended, relating to the State Fire Code; clarifying the State Fire Commission's process for updating the State Fire Code upon adoption of revised codes or standards by the National Fire Protection Association; requiring review and approval of county and municipal fire ordinances and agency regulations which impose more stringent standards than those required by the State Fire Code by the West Virginia State Fire Commission; and effective date.

Be it enacted by the Legislature of West Virginia:

That §29-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5. Promulgation of rules and State Fire Code.

(a) The State Fire Commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the safeguarding of life and property from the hazards of fire and explosion. The rules, amendments or repeals thereof shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities and political subdivisions of the state. Whenever any new or revised code or standard is adopted by the fire codes published by the National Fire Protection Association, the State Fire Commission may propose and promulgate revised rules reflecting such updated codes and standards: *Provided,* That the rules shall be effective as emergency rules when so promulgated until acted upon by the Legislature: *Provided, however,* That the State Fire Marshal shall provide compliance alternatives for historic structures as provided for in section five, article one of this chapter, which compliance

alternatives shall take into account the historic integrity of the historic structures; and shall coordinate with the Director of the Archives and History Division the application of the rules of that division.

(c) In interpretation and application, the State Fire Code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: *Provided,* That the State Fire Marshal shall provide compliance alternatives for historic structures and sites as provided in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of the historic structures and sites. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs, if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices: *Provided, however,* That, on and after July 1, 2010, if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by the West Virginia State Fire Commission. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state fire rules by officials of the state, counties, municipalities and political subdivisions of the state.

CHAPTER 178

(Com. Sub. for S. B. 596 - By Senators Wells, Minard and Kessler)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §5A-10-2 and §5A-10-9 of the Code of West Virginia, 1931, as amended, all relating to exempting the Adjutant General and the West Virginia National Guard from state leasing and accounting requirements.

Be it enacted by the Legislature of West Virginia:

That §5A-10-2 and §5A-10-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-2. Leases for space to be made in accordance with article; exceptions.
§5A-10-9. Real property accounting and records.

§5A-10-2. Leases for space to be made in accordance with article; exceptions.

1 (a) Notwithstanding any other provision of this code, no
2 department, agency or institution of state government may
3 lease, or offer to lease, as lessee, any grounds, buildings,
4 office or other space except in accordance with the provisions
5 of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;

(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations; or

(7) The Adjutant General's Department and the West Virginia National Guard, including all real property, acquisitions, leases, easements, armories, armory projects, appurtenances and operating revenue funds for those operations.

§5A-10-9. Real property accounting and records.

1 (a) All real property owned or leased by the state shall be
2 accounted for by the state spending unit that owns, leases or
3 is in the possession of the real property.

4 (b) Each state spending unit shall establish and maintain
5 a record of each item of real property it owns and/or leases
6 and annually furnish its records to the Real Estate Division.

7 (c) The accounting and reporting requirements of this
8 section, except as to office space, do not apply to:

9 (1) The Division of Highways of the Department of
10 Transportation;

11 (2) Public lands, rivers and streams acquired, managed or
12 which title is vested in or transferred to the Division of
13 Natural Resources of the Department of Commerce, pursuant
14 to section seven, article one, chapter twenty of this code and
15 section two, article five of said chapter;

16 (3) The Higher Education Policy Commission;

17 (4) The West Virginia Council for Community and
18 Technical College Education;

19 (5) The institutional boards of governors in accordance
20 with the provisions of subsection (v), section four, article
21 five, chapter eighteen-b of this code; or

22 (6) The Adjutant General's Department and the West
23 Virginia National Guard.

24 (d) With regard to public lands that may be by law
25 specifically allocated to and used by any state agency,

institution, division or department, such agency, institution, division or department shall provide an inventory of such public land(s) to the Public Land Corporation in accordance with the provisions of article eleven of this chapter.

(e) The records furnished to the Real Estate Division shall include the following information, if applicable:

(1) A description of each item of real property including:

(A) A reference to a book, page and/or image number from the county records in a particular county; or

(B) A legal description;

(2) The date of purchase and the purchase price of the real property;

(3) The date of lease and the rental costs of the real property;

(4) The name of the state spending unit holding title to the real property for the state;

(5) A description of the current uses of the real property and the projected future use of the real property; and

(6) A description of each building or other improvement located on the real property.

(f) If the description of real property required under this section is excessively voluminous, the Real Estate Division may direct the spending unit in possession of the real property to furnish the description only in summary form, as agreed to by the division and the spending unit.

CHAPTER 179

(Com. Sub. for S. B. 462 - By Senators D. Facemire and Foster)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §15-2-7 of the Code of West Virginia, 1931, as amended, relating to limiting the age of applicants for appointment to membership in the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees.

(a) The superintendent shall establish within the West Virginia State Police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the State Police.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the Armed Forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one years of age nor more than thirty-nine years of age, of sound constitution and good moral character; is required to pass any mental and physical examination; and meet other requirements as provided in rules promulgated by the cadet selection board: *Provided,* That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the State Police because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code and shall take positive steps to encourage applications for State Police membership from females and minority groups within the state. An annual report shall be filed with the Legislature on or before January 1 of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans and other minorities into the ranks of the State Police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the State Police at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint civilian employees as are necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

(h) Effective July 1, 2001, civilian employees with a minimum of five years' service shall receive a salary increase equal to $100 a year for each year of service as a civilian employee. Every three years thereafter, civilian employees who have five or more years of service shall receive an annual salary increase of $300. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.

CHAPTER 180

(S. B. 453 - By Senators Snyder, Jenkins, D. Facemire, Plymale and Foster)

[Passed March 13, 2010; in effect ninety day from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §29A-2-7 of the Code of West Virginia, 1931, as amended, relating to publication of the State Register.

Be it enacted by the Legislature of West Virginia:

That §29A-2-7 of the Code of West Virginia, 1931, as amended be amended and reenacted to read as follows:

ARTICLE 2. STATE REGISTER.

§29A-2-7. Publication of State Register.

(a) The Legislature intends that the Secretary of State offer to the public access to copies of the State Register and Code of State Rules. The State Register, the Code of State

Rules and other publications shall be available in electronic format. A person may request a printed copy of such from the Secretary of State for a fee.

(b) All materials filed in the State Register shall be indexed daily in chronological order of filing with a brief description of the item filed and a columnar cross index to:

(1) Agency;

(2) Code citation to which it relates and by which it is filed in the State Register; and

(3) Other information in the description or cross index as the Secretary of State believes will aid a person in using the index.

(c) The Secretary of State shall provide with each update of the Code of State Rules, a copy of the rule monitor and its cross index which shows the rules that have become effective but not yet distributed and the rules which may be superseded by a rule which is being proposed. The copy of the rule monitor distributed with the updates of the Code of State Rules shall state plainly that this version of the rule monitor only shows the status of the promulgation of rules as of the date of distribution of the update of the Code of State Rules, and that to obtain the most recent status of the rules, the user should consult the rule monitor in the most recent publication and instructions to users on how to use the rule monitor determining the version of the rule in the Code of State Rules currently in effect. This subsection is not to be construed to require that subscribers to the updates of the Code of State Rules receive a subscription to the State Register.

(d) The Secretary of State shall produce in an electronic format the permanent biennial State Register, the chronological index and other materials filed in the register, or any part by agency or section, article or chapter for subscription at a cost including labor, paper and postage,

37 sufficient in the Secretary of State's judgment to defray the
38 expense of such publication. The Secretary of State shall
39 also offer, at least at monthly intervals, supplements to the
40 published materials listed above. Any subscription for
41 monthly supplements shall be offered annually and shall
42 include the chronological index and materials related to an
43 agency or code citation as a person may designate. A
44 person may limit the request to notices only, to notices and
45 rules, or to notices and proposed rules, or any combination
46 thereof.

47 (e) Every two years, the Secretary of State shall offer for
48 purchase succeeding biennial permanent state registers
49 which shall consist of all rules effective on the date of
50 publication selected by the Secretary of State, which date
51 shall be at least two years from the last publication date, and
52 materials filed in the State Register relating to the rule. The
53 cost of the succeeding biennial permanent State Register and
54 for the portion relating to any agency or any code citation
55 which may be designated by a person shall be fixed in the
56 same manner specified in subsection (d) of this section.

57 (f) The Secretary of State may omit from any
58 duplication made pursuant to subsection (e) of this section
59 any rules the publication of which would be unduly
60 cumbersome, expensive or otherwise inexpedient, if a copy
61 of such rules is made available from the original filing of
62 such rule, at a price not exceeding the cost of publication,
63 and if the volume from which such rule is omitted includes
64 a notice in that portion of the publication in which the rule
65 would have been located, stating:

66 (1) The general subject matter of the omitted rule;

67 (2) Each code citation to which the omitted rule relates;
68 and

69 (3) The means by which a copy of the omitted rule may
70 be obtained.

(g) The Secretary of State may only propose changes to the procedures outlined in the above subsection by proposing a legislative rule under the provisions of section nine, article three of this chapter.

(h) The Secretary of State shall promulgate for legislative approval in accordance with the provisions of article three, of this chapter a fees schedule for publications described in this section.

(i) The fees and amounts collected for the sale of the State Register, the Code of State Rules and other copies or data provided by the Secretary of State shall be deposited in the state General Revenue Fund and one half of the fees in the service fees and collections account established in accordance with section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

CHAPTER 181

(Com. Sub. for S. B. 219 - By Senators Tomblin (Mr. President) and Caruth) [By Request of the Executive]

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §5A-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-48 and §5A-3-49 of said code, all relating to the management of motor vehicles and aircraft owned or possessed by the state;

authorizing the establishment of the Fleet Management Office within the Department of Administration; authorizing the Secretary of the Department of Administration to promulgate emergency rules; and repealing certain exemptions to rules pertaining to vehicles and aircraft owned or possessed by the state.

Be it enacted by the Legislature of West Virginia:

That §5A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5A-3-48 and §5A-3-49 of said code be amended and reenacted, all to read as follows:

Article
1. **Department of Administration.**
3. **Purchasing Division.**

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

(a) The Department of Administration and the Office of Secretary of Administration are continued in the executive branch of state government. The secretary is the Chief Executive Officer of the department and shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(b) The Department of Administration may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in section two-a, article seven, chapter six of this code.

(d) There shall be in the Department of Administration a Finance Division, a General Services Division, an Information Services and Communications Division, Division of Personnel and a Purchasing Division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary.

(e) There shall also be in the Department of Administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.

(f) The secretary may establish a Fleet Management Office within the Department of Administration to:

(1) Manage all motor vehicles and aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities: *Provided*, That such vehicles and aircraft shall not be used for personal purposes, other than for de minimis personal use;

(2) Administer the rules, including emergency rules, promulgated under the provisions of sections forty-eight and forty-nine, article three of this chapter; and

(3) Perform any duties relating to motor vehicles and aircraft owned or possessed by the State of West Virginia assigned by the secretary, which duties may include those set out in sections fifty through fifty-three, article three of this chapter.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-48. Travel rules; exceptions.
§5A-3-49. Central motor pool for state-owned vehicles and aircraft.

§5A-3-48. Travel rules; exceptions.

(a) The Secretary of Administration shall promulgate rules, including emergency rules, relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities.

(b) If, in the judgment of the Secretary of Administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section.

(c) The secretary may administer the travel regulations promulgated by the Governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the Governor.

§5A-3-49. Central motor pool for state-owned vehicles and aircraft.

The secretary may establish a central motor pool, which shall be maintained and administered by the Department of Administration, subject to such rules as the secretary may promulgate. The Department of Administration is responsible for the storage, maintenance, and repairs of all vehicles and aircraft assigned to the central motor pool.

CHAPTER 182

(Com. Sub. for H. B. 4188 - By Delegates Lawrence, Stowers, Skaff, Phillips, Hamilton, D. Poling, Manypenny, Marshall, T. Walker, Moore and Ellem)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §30-29-3 and §30-29-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-13-1, §61-13-2, §61-13-3, §61-13-4, §61-13-5 and §61-13-6, all relating to requiring an organized criminal organization investigation component with accompanying anti-racial profiling education and training for law enforcement; creating anti-organized criminal enterprise act; authorizing rulemaking, including emergency rules; creating timetable for developing procedures and rules; creating offenses of being a member of an organized criminal enterprise; criminalizing witness intimidation in organized criminal enterprise prosecutions; establish qualifying offenses; creating the offense of soliciting or inviting membership in an organized criminal enterprise; making premises used by organized criminal enterprises subject to public nuisance laws; allowing for forfeiture of property used for or obtained through organized criminal enterprises; establishing exempted activities; offenses; and penalties.

Be it enacted by the Legislature of West Virginia:

That §30-29-3 and §30-29-10 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 article §61-13-1, §61-13-2, §61-13-3, §61-13-4, §61-13-5 and §61-13-6, all to read as follows:

Chapter

30. Professions and Occupations.

61. Crimes and Their Punishment.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

§30-29-3. Duties of the Governor's committee and the subcommittee.
§30-29-10. Prohibition of racial profiling.

§30-29-3. Duties of the Governor's committee and the subcommittee.

1 Upon recommendation of the subcommittee, the
2 Governor's committee shall, by or pursuant to rules proposed
3 for legislative approval in accordance with article three,
4 chapter twenty-nine-a of this code:

5 (a) Provide funding for the establishment and support of
6 law-enforcement training academies in the state;

7 (b) Establish standards governing the establishment and
8 operation of the law-enforcement training academies,
9 including regional locations throughout the state, in order to
10 provide access to each law-enforcement agency in the state
11 in accordance with available funds;

12 (c) Establish minimum law-enforcement instructor
13 qualifications;

14 (d) Certify qualified law-enforcement instructors;

15 (e) Maintain a list of approved law-enforcement
16 instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(h) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(i) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in article thirteen, chapter sixty-one of this code, while preventing racial profiling, as defined in section ten of this article, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the Governor's committee as required in this section;

(j) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and

anti-racial profiling, and a time frame for which all law-enforcement officers must receive such training: *Provided,* That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the Governor's committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

(k) Certify law-enforcement officers, as provided in section five of this article;

(l) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(m) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(n) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account establish pursuant to section four of this article.

§30-29-10. Prohibition of racial profiling.

(a) The Legislature finds that the use by a law-enforcement officer of race, ethnicity, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is a problematic law-enforcement tactic. The reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law-enforcement officers and law-enforcement agencies to lose credibility and trust among the people law-enforcement is

10 sworn to protect and serve. Therefore, the West Virginia
11 Legislature declares that racial profiling is contrary to public
12 policy and should not be used as a law-enforcement
13 investigative tactic.

14 (b) For purposes of this section:

15 (1) The term "law-enforcement officer" means any duly
16 authorized member of a law-enforcement agency who is
17 authorized to maintain public peace and order, prevent and
18 detect crime, make arrests and enforce the laws of the state
19 or any county or municipality thereof.

20 (2) The term "municipality" means any incorporated
21 town or city whose boundaries lie within the geographic
22 boundaries of the state.

23 (3) The term "racial profiling" means the practice of a
24 law-enforcement officer relying, to any degree, on race,
25 ethnicity, or national origin in selecting which individuals to
26 subject to routine investigatory activities, or in deciding upon
27 the scope and substance of law-enforcement activity
28 following the initial routine investigatory activity. Racial
29 profiling does not include reliance on race, ethnicity, or
30 national origin in combination with other identifying factors
31 when the law-enforcement officer is seeking to apprehend a
32 specific suspect whose race, ethnicity, or national origin is
33 part of the description of the suspect.

34 (4) The term "state and local law-enforcement agencies"
35 means any duly authorized state, county or municipal
36 organization employing one or more persons whose
37 responsibility is the enforcement of laws of the state or any
38 county or municipality thereof.

39 (c) No law-enforcement officer shall engage in racial
40 profiling.

41 (d) All state and local law-enforcement agencies shall
42 establish and maintain policies and procedures designed to
43 eliminate racial profiling. Policies and procedures shall
44 include the following:

45 (1) A prohibition on racial profiling;

46 (2) Independent procedures for receiving, investigating,
47 and responding to complaints alleging racial profiling by
48 law-enforcement officers;

49 (3) Procedures to discipline law-enforcement officers
50 who engage in racial profiling;

51 (4) Procedures to insure the inclusion of training in the
52 investigation of organized criminal enterprises and anti-racial
53 profiling training in new officer training and to law-
54 enforcement officers who have not received such training as
55 certified by the Governor's committee; and

56 (5) Any other policies and procedures deemed necessary
57 by state and local law-enforcement agencies to eliminate
58 racial profiling.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT.

§61-13-1. Findings.
§61-13-2. Definitions.
§61-13-3. Offenses.
§61-13-4. Premises used by organized criminal enterprises; nuisances; actions for injunction, abatement and damages; other remedies for unlawful use; exceptions.
§61-13-5. Forfeiture.
§61-13-6. Exempted activities; limitations on scope.

§61-13-1. Findings.

(a) The Legislature hereby finds that there is evidence of an increasing incidence of larger scale organized criminal activity in various parts of this State and that new statutes are necessary to protect the lives and property of the overwhelming majority of West Virginians who are law-abiding citizens. The evidence presented to the Legislature reflects that persons engaged in larger scale ongoing criminal enterprises are of all ages, multiple racial and ethnic origin and all pose a rising threat.

(b) The Legislature further finds that there is a tendency among certain of these enterprises to actively recruit, sometimes coercively, people into joining such organizations as well as organized efforts to intimidate witnesses who may be in a position to offer testimony regarding the organized criminal enterprises and that such behavior cannot be tolerated.

(c) The Legislature further finds that lawful use of public nuisance and forfeiture laws can substantially aid in a reduction of larger scale organized criminal enterprises.

(d) The Legislature further finds that criminal statutes tailored to the particular problems represented by such organized criminal enterprises combined with community education and existing alternative sentencing laws can aid in reducing this new threat.

§61-13-2. Definitions.

As used in this article:

"Organized criminal enterprise" means a combination of five or more persons engaging over a period of not less than six months in one or more of the qualifying offenses set forth in this section.

"Qualifying offense" means a violation of the felony provisions of section eleven, article forty-one, chapter thirty-three of this code; the felony provisions of chapter sixty-A of this code; the felony provisions of article two of this chapter; the provisions of sections one, two, three, four, five, eleven, twelve, thirteen, fourteen, eighteen, nineteen, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this chapter; the felony provisions of sections article three-c of this chapter; the felony provisions of article three-e of this chapter; the felony provisions of article four of this chapter; the provisions of section eight, article eight of this chapter; the felony provisions of article eight-a of this chapter and the felony provisions of article eight-c of this chapter.

§61-13-3. Offenses.

(a) Any person who knowingly and willfully becomes a member of an organized criminal enterprise and who knowingly promotes, furthers or assists in the commission of any qualifying offense himself or herself or in combination with another member of an organized criminal enterprise shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than ten years or fined not more than $25,000, or both. The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(b) Any person who knowingly solicits, invites, recruits, encourages or causes another to become a member of an organized criminal enterprise or to assist members of an organized criminal enterprise to aid or assist in the commission of a qualifying offense by one or more members of an organized criminal enterprise shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than five years or fined not more than $10,000, or both.

(c) Any person who shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the provisions of this article, for the purpose of preventing the attendance of such witness at the trial of such case or to change testimony, or shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, shall be guilty of a felony and, upon conviction, shall be confined not more than ten years.

§61-13-4. Premises used by organized criminal enterprises; nuisances; actions for injunction, abatement and damages; other remedies for unlawful use; exceptions.

(a) Every private building or place used by members of an organized criminal enterprise for the commission of qualifying offenses is a nuisance and may be the subject of an injunction or cause of action for damages or for abatement of the nuisance as provided for in article nine of this chapter.

(b) Any person may file a petition for injunctive relief with the appropriate court seeking eviction from or closure of any premises used for the operation of an organized criminal enterprise. Upon proof by the plaintiff that the premises are being used by members of an organized criminal enterprise for the commission of a qualifying offense or offenses, the court may order the owner of record or the lessee of the premises to remove or evict the persons from the premises and order the premises sealed, prohibit further use of the premises, or enter such order as may be necessary to prohibit the premises from being used for the commission of a pattern of criminal gang activity and to abate the nuisance.

§61-13-5. Forfeiture.

(a) The following are declared to be contraband and no person shall have a property interest in them:

(1) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

(b) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(c) Forfeiture actions under this section shall use the procedures set forth in article seven, chapter sixty-a of this code.

§61-13-6. Exempted activities; limitations on scope.

Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to: any labor or employment relations issue; demonstration at the seat of federal, state, county, or municipal government; or activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

CHAPTER 183

**(Com. Sub. for H. B. 2503 -
By Delegate Carmichael)**

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §16-38-3 of the Code of West Virginia, 1931, as amended, relating to requiring licensed tattoo artists to inform patrons, prior to performing the tattoo procedure, of the potential problems that a tattoo may cause in relation to the clinical reading of magnetic resonance imaging studies; requiring the Department of Health and Human Resources to prepare written forms thereto; requiring an acknowledgment by the patron and specifying record keeping requirements.

Be it enacted by the Legislature of West Virginia:

That §16-38-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-3. Operation standards.

1 (a) *Records*. --

2 (1) Proper records of tattoos administered shall be
3 maintained for each patron by the holder of the studio
4 registration;

(2) A record shall be prepared for each patron prior to any procedure being performed and shall include the patron's name and signature, address, age, date tattooed, design of the tattoo, location of the tattoo on the patron's body and the name of the tattoo artist who performed the work;

(3) Record entries shall be in ink or indelible pencil and shall be available for examination by the inspecting authorities provided in section six of this article;

(4) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the risks involved in the tattoo requested, including the potential that a tattoo may interfere with the clinical reading of a magnetic resonance imaging study, should the patron intending to be tattooed ever encounter a medical need for such a study. The owner shall provide the patron with written information regarding the possible complications that may arise from receiving a tattoo. The written information shall be prepared by the Department of Health and Human Resources. Receipt of the information shall be acknowledged in writing by the patron. The owner or tattoo artist shall also keep and maintain the acknowledgment as part of the patron's record pursuant to the provisions of subdivision (5) of this subsection.

(5) All records required by this section shall be kept on file for five years by the holder of the studio registration for the studio in which the tattoo was performed.

(b) *Consent.* --

(1) Prior written consent for tattooing of minors shall be obtained from one parent or guardian;

(2) All written consents shall be kept on file for five years by the holder of the studio registration for the tattoo studio in which the tattoo was performed;

(3) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated or under the influence of drugs or alcohol.

(c) *Tattooing procedures*. --

(1) Printed instructions on the care of the skin after tattooing shall be given to each patron as a precaution to prevent infection;

(2) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed;

(3) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.;

(4) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough, jaundice, draining or open skin infections such as boils which could be indicative of more serious conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from tattooing activities until such time as they are no longer experiencing or exhibiting the aforementioned symptoms;

(5) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual hand brush that is clean and in good repair;

(6) The tattoo artist's hands shall be air blown dried or dried by a single-use towel. In addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured or whenever their ability to function as a barrier is compromised;

(7) Only sterilized or single-use, disposable razors shall be used to shave the area to be tattooed;

(8) Immediately prior to beginning the tattoo procedure, the affected skin area shall be treated with an antibacterial solution;

(9) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least 20 minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use;

(10) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper stencil shall be single-use and disposable;

(11) If the design is drawn directly onto the skin, the design shall be applied with a single-use article only.

(d) *Dyes or pigments*. --

(1) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or disposable single-use containers for each patron;

(2) After tattooing, the unused dye or pigment in the single-use containers shall be discarded along with the container;

(3) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(e) *Sterilization of needles*. --

(1) A set of individual, sterilized needles shall be used for each patron;

(2) No less than twenty-four sets of sterilized needles and tubes shall be on hand for the entire day or night operation. Unused sterilized instruments shall be resterilized at intervals of no more than six months from the date of the last sterilization;

(3) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(4) If used instruments are ultrasonically cleaned prior to being placed in the used instrument container, they shall be ultrasonically cleaned and then rinsed under running hot water prior to being placed in the used instrument container;

(5) The ultrasonic unit shall be sanitized daily with a germicidal solution;

(6) If used instruments are not ultrasonically cleaned prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(7) All nondisposable instruments, including the needle tubes, shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents;

(8) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization, shall be utilized during the autoclave sterilization process;

(9) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them;

125 (10) No rusty, defective or faulty instruments shall be
126 kept in the studio.

127 (f) *Aftercare of tattoo.* --

128 The completed tattoo shall be washed with a single-use
129 towel saturated with an antibacterial solution.

CHAPTER 184

(Com. Sub. for S. B. 397 - By Senators Snyder, Unger and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1-2b, relating to creating a single dwelling residential housing index and multiplier generally; providing requirements for the Tax Commissioner; establishing required contents of the index and multiplier; and requiring an annual reporting.

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 §11-1-2b, to read as follows:

ARTICLE 1. SUPERVISION.

§11-1-2b. Housing index requirements.

(a) For purposes of this section only annually, on or before January 1, the Tax Commissioner shall create a single dwelling residential housing index which shall contain the cost of all single dwelling residential housing in the state. The index shall list the average and median cost of single dwelling residential housing by county and by square footage, if available, commencing with the most expensive to the least expensive.

(b) For purposes of this section only, the Tax Commissioner shall also, annually, on or before January 1, establish:

(1) A single dwelling residential housing index multiplier;

(2) The average and median cost of single dwelling residential housing in the state;

(3) The multiplier needed to equal the housing cost in the least expensive county to the most expensive county;

(4) Whether the average and median cost of single dwelling residential housing in a county is above or below the average and median cost for the entire state; and

(5) A table indicating:

(A) The average and median cost of single dwelling residential housing in the state; and

(B) The multiplier for each county, comparing the statewide average and median cost of single dwelling residential housing with a multiplier calculated in relation to the average value.

28 (c) For purposes of this section only, the Tax
29 Commissioner shall annually, on or before December 31 of
30 each year, provide the single dwelling residential housing
31 index and multiplier to the Joint Committee on Government
32 and Finance and also make it available to the public.

CHAPTER 185

(Com. Sub. for S. B. 401 - By Senators McCabe, Wells, Prezioso, K. Facemyer, Boley, Plymale, Fanning, Minard, Edgell, Jenkins, Chafin and Foster)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto fourteen new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-23a, §11-3-24b, §11-3-25a, §11-3-32 and §11-3-33; to amend said code by adding thereto a new article, designated §11-6K-1, §11-6K-2, §11-6K-3, §11-6K-4, §11-6K-5, §11-6K-6, §11-6K-7 and §11-6K-8; and to amend and reenact §18-9A-12 of said code, all relating to taxation of real and personal property for ad valorem property tax purposes; defining and conforming terms used; making technical corrections in certain code sections to conform to prior acts of the Legislature; accelerating date for issuance of notices of increase in assessed value of real property; updating penalties for failure to file required property tax reports and returns; clarifying report and return filing requirements; accelerating due dates for filing reports and

returns; assessment of property of limited liability companies; requiring assessors to notify owners of commercial business personal property of increases in assessed values for current assessment year by an established deadline; providing procedures for property owners to protest notices of assessed valuation and obtain appropriate adjustments from county assessors; providing for appeal of protested assessments to county board of equalization and review, board of assessment appeals and circuit court; providing for protest of classification or taxability to Tax Commissioner; specifying effective dates; providing for discovery; authorizing assignment to hearing examiner; providing methods for assessment of industrial property and natural resources property; establishing time and basis for assessments; providing for pertinent definitions; specifying form and manner of making returns; establishing criminal penalties for failure to file; providing for tentative appraisals by Tax Commissioner and notification to taxpayers; providing procedures for informal review of tentative appraisals; making of final appraisals; transmitting final appraisals to assessors; providing for appeals; authorizing reductions of assessments upon instruction of Tax Commissioner in certain circumstances; specifying effective dates; and holding harmless the local share for public school support for reductions in revenues resulting from decisions of a board of assessment appeals.

Be it enacted by the Legislature of West Virginia:

That §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto fourteen new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-23a, §11-3-24b, §11-3-25a, §11-3-32 and §11-3-33; that said code be amended by adding thereto a new article, designated §11-6K-1, §11-6K-2, §11-6K-3, §11-6K-4, §11-6K-5, §11-6K-6, §11-6K-7 and §11-6K-8; and that §18-9A-12 of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
18. Education.

CHAPTER 11. TAXATION.

Article
3. Property Tax Assessments Generally.
6K. Assessment of Industrial Property and Natural Resources Property.

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.
§11-3-2a. Notice of increased assessment required for real property; exceptions to notice.
§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.
§11-3-12. Assessment of corporate property; reports to assessors by corporations.
§11-3-15. Assessment of capital used in trade or business by natural persons or unincorporated businesses.
§11-3-15a. Assessment of property of limited liability companies.
§11-3-15b. Notice of increase in assessed value of business personal property.
§11-3-15c. Petition for assessor review of improper valuation of real property.
§11-3-15d. Administrative review of tangible personal property valuation by assessor.
§11-3-15e. Contents of petition based on income approach to value of real property.
§11-3-15f. Rejection of petition for failure to include substantial information; amended petition; appeal.
§11-3-15g. Meeting between assessor and petitioner.
§11-3-15h. Ruling on petition.
§11-3-15i. Petitioner's right to appeal.
§11-3-19. Property books; time for completing; extension of levies; copies.
§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.
§11-3-24. Review and equalization by county commission.
§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner.
§11-3-24b. Board of Assessment Appeals.
§11-3-25. Relief in circuit court against erroneous assessment.
§11-3-25a. Payment of taxes that become due while appeal is pending.
§11-3-32. Effective date of amendments.
§11-3-33. Rules.

§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.

1 (a) All property, except public service businesses
2 assessed pursuant to article six of this chapter, shall be
3 assessed annually as of July 1 at sixty percent of its true and

actual value, that is to say, at the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.

(b) Any conflicting provisions of subsection (a) of this section notwithstanding, the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by also giving consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: *Provided,* That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: *Provided, however,* That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations.

(c) The taxes upon all property shall be paid by those who are the owners thereof on the assessment date whether it be assessed to them or others.

(d) If at any time after the beginning of the assessment year, it be ascertained by the Tax Commissioner that the assessor, or any of his or her deputies, is not complying with this provision or that they have failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at sixty percent of its true

and actual value as determined under this chapter, the Tax Commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making assessment and correction of values, the Tax Commissioner may appoint one or more special assessors, as necessity may require, to make assessment in any county and any such special assessor or assessors, as the case may be, has the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or her or them. The Tax Commissioner shall fix the compensation of all special assessors appointed, which, together with their actual expenses, shall be paid out of the county fund by the county commission of the county in which any such assessment is ordered, upon the receipt of a certificate of the Tax Commissioner filed with the clerk of the county commission showing the amounts due and to whom payable, after such expenses have been audited by the county commission.

(e) Any assessor who knowingly fails, neglects or refuses to assess all the property of his or her county, as herein provided, shall be guilty of malfeasance in office and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or imprisoned not less than three nor more than six months, or both, in the discretion of the court, and upon conviction, shall be removed from office.

(f) For purposes of this chapter and chapter eleven-a of this code, the following terms have the meanings ascribed to them in this section unless the context in which the term is used clearly indicates that a different meaning is intended by the Legislature:

(1) "Assessment date" means July 1 of the year preceding the tax year.

(2) "Assessment year" means the twelve-month period that begins on the assessment date.

(3) "Tax year" or "property tax year" means the next calendar year that begins after the assessment date.

(4) "Taxpayer" means the owner and any other person in whose name the taxes on the subject property are lawfully assessed.

§11-3-2a. Notice of increased assessment required for real property; exceptions to notice.

(a) If the assessor determines the assessed valuation of any item of real property appraised by him or her is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is $1,000 or more and the increase is entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given on or before January 15 of the tax year and advise the person assessed or the person controlling the property of his or her right to appear and seek an adjustment in the assessment: *Provided,* That this notification requirement does not apply to industrial or natural resources property appraised by the Tax Commissioner under article six-k of this chapter which is assessed at sixty percent of its true and actual value. The notice shall be made by first-class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in one or more of the tax districts in which

case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

(1) The taxpayer having signed the assessment form after it had been completed showing the increase;

(2) Notice was given as provided in section three-a of this article; or

(3) The person assessed executing acknowledgment of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the Tax Commissioner and each county assessor shall send every person owning or controlling property appraised by the Tax Commissioner or the county assessor a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The property valuation training and procedures commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

(a) If any person, firm or corporation, including public service corporations, whose duty it is by law to list any real estate or personal property for taxation, refuses to furnish a proper list thereof or refuses to list within the time required by law, or if any person, firm or corporation, including public

service corporations, refuses to answer or answers falsely any question asked by the assessor or by the Tax Commissioner, or fails or refuses to deliver any statement required by law, the person, firm or corporation may forfeit, at the discretion of the assessor or the Tax Commissioner for good cause shown, not less than $25 nor more than $100. If any person, firm or corporation willfully fails to furnish a proper list of real estate or personal property for taxation or refuses to answer or falsely answers any question asked by the assessor or by the Tax Commissioner, or fails or refuses to deliver any statement required by law, such person, firm or corporation shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works: *Provided,* That no person, firm or corporation shall be denied the remedy provided by law to contest any assessment unless the assessor or the Tax Commissioner has notified such person, firm or corporation in writing that this penalty will be asserted and the requested information is not provided within fifteen days of the date of receipt of the notice.

(b) If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether the return is to be made to the assessor, the board of Public Works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, the person, firm or corporation, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this state.

(c) A forfeiture as to all property aforesaid may be enforced for any default occurring in any year not exceeding five years immediately prior to the time the default is discovered.

(d) Each failure to make a true return as herein required constitutes a separate offense, and a forfeiture shall apply to

each of them, but all forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against the person, firm or corporation, or against the estate of any deceased person, and may not exceed five percent of the value of the property not returned that is required to be returned for taxation by this chapter.

(e) Forfeitures shall be collected as provided in article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his or her personal representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon the property if it had been assessed, in proportion to the rates of taxation for each levying unit for the year in which the judgment was obtained bears to the sum of rates for all.

(f) When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of real and tangible personal property of the deceased person next preceding the appraisal of his or her estate, it is prima facie evidence that the deceased person returned an imperfect list of his or her property: *Provided,* That any person liable for the tax, or his or her personal representative, may always be permitted to prove by competent evidence that the discrepancy between the assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation.

(g) Any judgment recovered under this section is a lien, from the time of the service of the notice, upon all real estate and personal property of the defaulting taxpayer, owned at

the time or subsequently acquired, in preference to any other lien.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

(a) Each incorporated company, banking institution and national banking association, foreign or domestic, having its principal office or chief place of business in this state, owning property subject to taxation in this state, except railroad, telegraph and express companies, telephone companies, pipeline, car line companies and other public utility companies, shall annually, between the assessment date and September 1, make a written report, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated or in which property subject to taxation in this state is located if the corporation does not have a principal office or chief place of business in this state, showing the following items: (1) The quantity, location and fair market value of all of its real estate, and tax district or districts in which it is located; and (2) the kinds, quantity and fair market value of all its tangible personal property in each tax district in which it is located.

(b) The oath required for this section shall be substantially as follows:

State of West Virginia, County ....., ss:

I, ..., president (treasurer or manager) of (here insert name of corporation), do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and tangible personal property that the value affixed to such property is, in my opinion, its value, by which I mean the price at which it would sell if voluntarily

offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and said corporation has not, to my knowledge, during the sixty-day period immediately prior to the assessment date converted any of its assets into nontaxable securities or notes or other evidence of indebtedness for the purposes of evading the assessment of taxes thereon; so help me, God.

The officer administering the oath shall append thereto the following certificate:

Subscribed and sworn to before me by ..... this the ..... day of....., 20 .....

§11-3-15. Assessment of capital used in trade or business by natural persons or unincorporated businesses.

(a) The value of the capital used by any individual or firm, not incorporated, in any trade or business taxable by law, shall be ascertained in the following manner: The owner, agent or chief accountant of every trade or business, except the business of agriculture, carried on in any county of the state shall annually, on or after the assessment date and on or before September 1, make a written report to the assessor, verified by his or her affidavit, showing the following matter and things determined as of the assessment date:

(1) The amount, the true and actual value and classification of all tangible personal property used in connection with the trade or business, other than that regularly kept for sale therein, including chattels real and personal;

(2) The true and actual value and classification of all goods and property kept for sale and remaining unsold; and

(3) The location, quantity, the true and actual value and classification of all real estate owned by the individual or firm and used in the trade or business.

(b) The assessor shall, upon the receipt of such report, properly verified, if the assessor is satisfied with the correctness thereof, enter the real estate in the land book of the county in the tax district wherein the same is situated and assess the same with taxes, if not otherwise assessed, to the owner thereof: *Provided,* That the personal property mentioned in the report shall be entered in the personal property book of the county for assessment with taxes as follows: Items (1) and (2) shall be entered in the tax districts where they are for the greater part of the year kept or located; and item (3) shall be entered under its appropriate heading in the municipality or tax district wherein the property is located.

(c) If the assessor is not satisfied with the correctness of the report, the assessor may proceed to ascertain a correct list of the property on which the individual or firm is liable to be assessed with taxes, and to value the same as in other cases.

(d) The person making the report shall take and subscribe an oath in substantially the following form:

I, ..., do solemnly swear (or affirm) that the foregoing list is true and correct to the best of my knowledge; that the value affixed to the property therein listed I believe to be the true and actual value thereof; that none of the assets belonging to (here state the name of individual or firm) and used in the business of (here describe the business) have to my knowledge, since the assessment date, been converted into nontaxable securities for the purpose of evading the assessment of taxes thereon; so help me, God.

The officer administering the oath shall append thereto the following certificate:

Subscribed and sworn to before me by (here insert affiant's name) this ..... day of ....., 20 .....

§11-3-15a. Assessment of property of limited liability companies.

Limited liability companies that elect to be treated as a corporation for federal income tax purposes shall make and file the report required of corporations in section twelve of this article. Limited liability companies treated as a partnership for federal income tax purposes shall make and file the report required in section fifteen of this article. A limited liability company that elects to be treated as a disregarded entity for federal income tax purposes shall be treated as a disregarded entity under this article and its owner shall make and file the report required by section twelve or section fifteen of this article depending upon whether the owner is a corporation, a firm or an individual.

§11-3-15b. Notice of increase in assessed value of business personal property.

(a) On or before January 15 of the tax year, the assessor shall mail a notice of assessed value to any corporation, partnership, limited partnership, limited liability company, firm, association, company or other form of organization engaging in business activity in the county showing the aggregated assessed value of taxpayer's tangible personal property situated in the county on the assessment date, if known, that is not appraised by the Tax Commissioner: *Provided,* That notice is only required if:

(1) The aggregated assessed value of taxpayer's tangible personal property used in business activity is more than ten percent greater than the aggregated assessed value of the property in the prior tax year; and

(2) The aggregated assessed value of property has increased by more than $100,000 since the prior tax year.

However, this notification requirement does not apply to industrial or natural resources personal property that is appraised by the Tax Commissioner under article six-k of this chapter which is assessed at sixty percent of its true and actual value.

(b) The assessor shall include in the assessment notice:

(1) The assessed value of the property for the preceding assessment year;

(2) The proposed assessed value of the property for the current assessment year;

(3) The classification of the property pursuant to section one, Article X of the Constitution of this state;

(4) The mailing date of the notice; and

(5) The last date on which the taxpayer may file a petition for review with the assessor from the valuation or classification assigned to the property.

(c) The notice required by this section shall be: (1) In writing, in the form prescribed by the Tax Commissioner, and mailed to the taxpayer's last known mailing address; or (2) by electronic notification.

(d) No later than the sixteenth day of the tax year, the assessor shall certify to the county commission and to the Tax Commissioner the date on which all notices under this section were mailed.

(e) After the mailing date of the notice any person who owns, claims, possesses or controls property that is valued by the assessor may inquire of and be advised by the assessor as to the valuation of the property determined by the assessor.

(f) The owner or person in possession of the tangible personal property may petition the assessor for review as provided in section fifteen-d of this article.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in section two-a of this article may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer provides substantial information to justify the opinion of value by stating the method or methods of valuation on which the opinion is based:

(1) Under the income approach, including the information required in section fifteen-e of this article;

(2) Under the market approach, including the true and actual value of at least three comparable properties in the same geographic area or the sale of the subject property; or

(3) Under the cost approach, including the replacement cost or the cost to build or rebuild the property, plus the true and actual value of the land.

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner's guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis and are located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within five days after the date the taxpayer receives the notice of increased assessment under section two-a of this article or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section.

§11-3-15d. Administrative review of tangible personal property valuation by assessor.

(a) The owner of business tangible personal property that is valued by the assessor or the person in whose possession it is found on the assessment date may appeal to the assessor within five days after the date the notice of increased assessment required by section fifteen-b of this article was received by filing a petition with the assessor on a form prescribed by the Tax Commissioner. The petition shall set forth in writing:

(1) The taxpayer's opinion of the value of the tangible personal property; and

(2) Substantial information that justifies the opinion of value in order for the assessor to consider the information for the purpose of basing a change in the valuation.

(b) The assessor shall rule on each petition no later than February 10 of the tax year.

(c) The notice of the assessor's ruling provided under this section shall be given in the same manner as prescribed in section fifteen-h of this article.

(d) If the request of the petitioner is denied, in whole or in part, the notice required by subsection (c) of this section shall include the grounds for refusing to grant the request contained in the petition.

(e) This section shall not apply to tangible personal property appraised by the Tax Commissioner as part of an industrial or natural resource property appraisal.

§11-3-15e. Contents of petition based on income approach to value of real property.

(a) A petition that is filed with the assessor under section fifteen-c or fifteen-d of this article based on the income approach to value shall include income and expense data relating to the property for the three most recent consecutive fiscal years of the petitioner ending on or before June 30 preceding the then current assessment year. If the income and expense data is not available to the petitioner, the petitioner shall file with the petition such income and expense data as is available. The Tax Commissioner, by rule, may establish additional information to be filed if the required income and expense data are not available.

(b) If a petitioner under this article uses the income approach to determine valuation, the petitioner, an officer of a corporate petitioner, a general partner or a designated agent shall file a sworn affidavit under penalty of perjury that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

§11-3-15f. Rejection of petition for failure to include substantial information; amended petition; appeal.

1 If the assessor rejects a petition filed pursuant to section
2 fifteen-c, fifteen-d or fifteen-e of this article, the petitioner
3 may appeal to the county board of equalization and review as
4 provided in section twenty-four of this article.

§11-3-15g. Meeting between assessor and petitioner.

1 (a) At the petitioner's written request, the assessor or a
2 member of his or her staff shall meet with the petitioner and
3 the petitioner's representative, if any, at a time and place
4 designated at least three working days in advance by the
5 assessor after the petition is filed.

6 (b) If the petitioner is unable to appear and meet with the
7 assessor at the time and place set by the assessor, the
8 petitioner may submit written evidence to support the petition
9 if it is submitted before the date of the meeting.

§11-3-15h. Ruling on petition.

1 (a) In all cases the assessor shall consider the petition and
2 shall rule on each petition filed pursuant to section fifteen-c,
3 fifteen-d or fifteen-e of this article by February 10 of the
4 assessment year. Written notice shall be served by regular
5 mail on the person who filed the petition.

6 (b) In considering a petition filed pursuant to section
7 fifteen-c, fifteen-d or fifteen-e of this article, the assessor
8 shall consider the valuation fixed by the assessor on other
9 similar property that is similarly situated.

§11-3-15i. Petitioner's right to appeal.

(a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of the assessor.

(b) If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting held as provided in section fifteen-g of this article, both parties shall sign the agreement and both parties waive the right to further appeal.

(c) If all or part of the petitioner's request under section fifteen-c, fifteen-d or fifteen-e of this article is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change or changes requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner who does not receive a response from the assessor by February 10, as provided in section fifteen-h of this article, may file a protest with the county commission sitting as a board of equalization and review, as provided in section twenty-four of this article.

§11-3-19. Property books; time for completing; extension of levies; copies.

The assessor shall complete the assessment and make up the assessor's official copy of the land and personal property books in time to submit the same to the board of equalization and review not later than February 1 of the tax year. The assessor shall, as soon as practicable after the levy is laid, extend the levies on the land and personal property books, and shall forthwith make three copies of the land books and two copies of the personal property books with the levies extended. One of the copies of the land books shall be delivered to the sheriff not later than June 7; one copy shall be delivered to the clerk of the county commission not later than July 1; and one copy shall be sent to the State Auditor

not later than July 1. One of the copies of the personal property books shall be delivered to the sheriff and one copy shall be delivered to the clerk of the county commission on or before the same date fixed above for the delivery of the land books. The copies shall be official records of the respective officers. The assessor may require the written receipt of each of the officers for the copy. Before delivering any of the copies the assessor shall make and subscribe the following oath at the foot of each of them:

I, ..., assessor of the county of ....., do solemnly swear, (or affirm) that in making the foregoing assessment I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors and that I have not been influenced in making the same by fear, favor or partiality; so help me, God.

.....

assessor.

The officer administering the foregoing oath shall append thereto a certificate in substantially the following form:

Subscribed and sworn to before me, a ..... for the County of ..... and State of West Virginia, by ....., assessor for said county, this the ..... day of ....., 20 .....

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

(a) *General.* -- Anytime after real or tangible personal property is returned for taxation, the taxpayer may apply to the assessor of the county in which the property was situated on the assessment date for information about the classification, taxability or valuation of the property for property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is not satisfied with the

8 response of the assessor and wants to further pursue the
9 matter must follow the procedures set forth in this section.

10 (b) *Classification or taxability.* -- A taxpayer who wants
11 to contest the classification or taxability of property must
12 follow the procedures set forth in section twenty-four-a of
13 this article.

14 (c) *Valuation issues - property appraised and assessed by*
15 *county assessor.* --

16 (1) A taxpayer who is dissatisfied with the response of
17 the assessor on a question of valuation and who receives a
18 notice of increase in the assessed value of real property as
19 provided in section two-a of this article, or a notice of
20 increase in the assessed value of business personal property
21 as provided in section fifteen-b of this article, who disagrees
22 with the assessed value stated in the notice, may utilize the
23 informal review process specified in this article if the
24 taxpayer decides to challenge the assessed value.

25 (2) A taxpayer may apply for relief to the county
26 commission sitting as a board of equalization and review
27 pursuant to section twenty-four of this article not later than
28 February 20 of the tax year by filing a written protest with the
29 clerk of the county commission that identifies the amount of
30 the assessed value the taxpayer believes to be in controversy
31 and states generally the taxpayer's reason or reasons for
32 filing the protest. The board shall then set a date and time to
33 hear the taxpayer's protest: *Provided,* That in the written
34 protest or in a separate notice filed with the board on or
35 before the day of the hearing, the taxpayer or taxpayer's
36 representative may notify the board of the taxpayer's election
37 to have the matter heard when the county commission
38 convenes as a board of assessment appeals in the fall of the
39 tax year as provided in section twenty-four-b of this article.
40 A copy of this election shall be served on the assessor, and

the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that the taxpayer will timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the board adjourns sine die before February 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described in this subdivision with the county clerk on or before February 20 of the tax year, and the petition shall be heard when the county commission meets as a board of assessment appeals, as provided in section twenty-four-b of this article. If a taxpayer fails to provide its written protest on or before February 20, and the board unilaterally increases the assessed value subsequent to that date, the taxpayer may still file a written protest and the acknowledgment described in this subdivision with the county clerk, and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article.

(d) *Valuation issues - property appraised by Tax Commissioner and assessed by county assessor.* --

(1) A taxpayer who receives a notice of tentative appraised value of natural resource property or industrial property from the Tax Commissioner pursuant to article six-k of this chapter, who disagrees with the value stated in the notice may utilize the informal review process specified in this article and article six-k of this chapter.

(2) A taxpayer may apply for relief to the county commission sitting as a board of equalization and review pursuant to section twenty-four of this article no later than February 20 of the tax year by filing a written protest with the clerk of the county commission that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board shall then set a date and time to hear the taxpayer's protest: *Provided,* That in the written protest or in a separate notice filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify the board of the taxpayer's election to have the matter heard when the county commission convenes as a board of assessment appeals in the fall of the tax year as provided in section twenty-four-b of this article. A copy of this election shall be served on the assessor, and the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that taxpayer will timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the board adjourns sine die before February 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described in this subdivision with the county clerk on or before February 20 of the tax year, and the petition shall be heard when county commission meets as a board of assessment appeals, as provided in section twenty-four-b of this article. If a taxpayer fails to provide its written protest on or before February 20, and the board unilaterally increases the assessed value subsequent to that date, the

taxpayer may still file a written protest and the acknowledgment described in this subdivision with the county clerk, and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article.

§11-3-24. Review and equalization by county commission.

(a) The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. The board shall not adjourn for longer than three business days at a time, not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The board may adjourn sine die anytime after February 15 of the tax year and shall adjourn sine die not later than the last day of February of the tax year.

(b) At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them.

(c) The board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. The board shall correct all errors in the names of persons, in the description and valuation of property, and shall cause to be done whatever else is necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.

(d) If the board determines that any property or interest is assessed at more or less than sixty percent of its true and actual value as determined under this chapter, it shall fix it at sixty percent of its true and actual value: *Provided,* That no assessment shall be increased without giving the taxpayer at least five days' notice, in writing, of the intention to make the increase and no assessment shall be greater than sixty percent of the true and actual value of the property.

(e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or her agent or attorney, if served in person, or if sent by registered or certified mail to the property owner, his or her agent, or attorney, at the last known mailing address of the person as shown in the records of the assessor or the tax records of the county sheriff. If such person cannot be found and has no last known mailing address, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The date of the publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the increase. When the board intends to increase the entire valuation in any one tax district by a general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The date of the last publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is acted on by the board. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided.

The clerk of the county commission shall publish notice of the time, place and general purpose of the meeting as a

Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

(f) Any person who receives notice as provided in subsection (e) of this section may appear before the board at the time and place specified in the notice to object to the proposed increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for the proposed increase, the taxpayer may present his or her objection or objections to the increase and the reason or reasons for the objections and may either orally or in writing advise the board that the taxpayer elects for the matter to be heard in the fall of the tax year when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article: *Provided,* That taxpayer's election shall not stay a decision by the board to increase the assessed value of the property for the current tax year.

(g) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resources property, that resolves a valuation matter while the land and personal property books are before the board for equalization and review.

(h) If any person fails to apply for relief at this meeting, he or she shall have waived the right to ask for correction in the assessment list for the current year, and shall not thereafter be permitted to question the correctness of the list as finally fixed by the board, except on appeal to the circuit court or as otherwise provided in this article.

(i) After the board completes the review and equalization of the property books, a majority of the board shall sign a

statement that it is the completed assessment of the county for the tax year. Then the property books shall be delivered to the assessor and the levies extended as provided by law.

(j) A taxpayer who elects to have a hearing before the board of equalization and review may appeal the board's order as provided in section twenty-five of this article. A taxpayer who elects to have a hearing before the board of assessment appeals may only appeal the assessed value as provided in section twenty-four-b of this article.

§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner.

(a) At any time after property is returned for taxation, and up to and including the time the property books are before the county commission sitting as a board of equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property assessed to the taxpayer or believes that the property is exempt or otherwise not subject to taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for refusal to grant the protest.

(b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements, giving a full description of the property and any other information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms on which the aforesaid question shall be certified and the Tax Commissioner shall have the authority to pursue any inquiry and procure any information necessary for the disposition of the issue.

(c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding upon the assessor, but either the assessor or the taxpayer may apply to the circuit court of the county within thirty days after receiving written notice of the Tax Commissioner's ruling, for review of the question of classification or taxability in the same fashion as is provided for appeals from the county commission sitting as a board of equalization and review in section twenty-five of this article.

(d) The amendments to this section enacted in the year 2010 shall apply to classification and taxability rulings issued for taxes levied after December 31, 2011.

§11-3-24b. Board of Assessment Appeals.

(a) The county commission shall meet as a board of assessment appeals no sooner than October 1 of the tax year, unless that day is a Saturday, Sunday or legal holiday in this state, in which event the board shall begin meeting on the next day that is not a Saturday, Sunday or legal holiday.

(b) The board shall set a date and time for hearing each protest filed on of before February 20 of the tax year, as provided in section twenty-three-a of this article, and for which the taxpayer elected to have the matter heard by the board of assessment appeals: *Provided,* That the commission may, before, on or after October 1, begin developing a hearing schedule for hearings to commence on or after October 1. The board may in its discretion grant one or more continuances of the hearing date. The board shall grant a continuance when the continuance is agreed to by the assessor and the taxpayer. When the hearing involves industrial property or natural resources property appraised by the Tax Commissioner, the board shall grant continuances of

hearing dates and otherwise work with the Tax Commissioner to develop a hearing schedule that recognizes the limitations of state resources and the fact that the Tax Commissioner is responsible for appraising industrial properties and natural resource properties in all fifty-five counties.

(c) Upon the timely request of any party, the board may, before, on or after October 1, develop a discovery schedule for the exchange of information between the taxpayer and the assessor and, in matters involving industrial property or natural resources property, the Tax Commissioner. Any objections to discovery may be made to the board which shall rule on such objections. Any willful failure to provide the information requested through the discovery process and required by the board may be grounds for dismissal of the appeal by the board: *Provided,* That the board shall provide written justification for dismissal to all parties, and: *Provided, however,* That any dismissal may be appealed to the circuit court as provided in section twenty-five of this article.

(d) The board may assign the appeal to a hearing examiner for the taking of evidence if the hearing examiner is mutually agreed to by the parties to the appeal. The hearing examiner shall have the same authority as the board to schedule hearings and schedule and compel discovery: *Provided*, That, in the case of a willful failure to provide information, an appeal may be dismissed only by the board as provided in subsection (c) of this section. Hearings before a hearing examiner shall be recorded electronically. Upon the conclusion of discovery and hearings on an appeal, the hearing examiner shall make a written report of findings of fact and conclusions of law and provide the same to the board and all parties to the appeal. The board shall issue its order consistent with the report of the hearing examiner without the taking of additional evidence. The cost and expenses of the hearing examiner shall be paid by the board.

(e) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resource property, that resolves a valuation matter that arose while the land and personal property books were before the board of equalization and review.

(f) The board shall issue its order within a reasonable time after the record for the hearing is closed and all required briefs have been submitted.

(g) Any party to the hearing may appeal the order of the board in the manner provided in section twenty-five of this article for appealing an order of the board of equalization and review.

(h) In the event the board reduces an assessed value in an order that becomes final, the county clerk shall certify copies of the order to the Auditor, sheriff and assessor, and to the Tax Commissioner if the property is industrial property or natural resources property. The taxpayer shall be entitled to a credit voucher to be applied against future taxes as provided in this article. When endorsed by the taxpayer, the voucher shall be sufficient to entitle the sheriff to a credit for so much of his or her settlement which he or she is required to make.

(i) The board of assessment appeals shall meet as often as necessary until the work of the board is completed: *Provided,* That the board shall adjourn sine die not later than October 31 of the tax year unless the board, by majority vote, agrees to extend the term if necessary to afford the parties due process and to complete its work, after which it shall adjourn sine die.

§11-3-25. Relief in circuit court against erroneous assessment.

(a) Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation as provided in section twenty-four or twenty-four-a of this article, or whose assessment has been raised by the county commission sitting as a board of equalization and review above the assessment fixed by the assessor may, at any time up to thirty days after the adjournment of the board sitting as a board of equalization and review, or at anytime up to thirty days after the order of the board of assessment appeals is served on the parties, apply for relief to the circuit court of the county in which the property books are made out; but any person applying for relief in circuit court shall, before any application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of hearing to the Tax Commissioner.

(b) The right of appeal from any assessment by the board of equalization and review or order of the board of assessment appeals as provided in this section, may be taken either by the applicant or by the state, and in case the applicant, by his or her agent or attorney, or the state, by its prosecuting attorney or Tax Commissioner, desires to take an appeal from the decision of the either board, the party desiring to take an appeal shall have the evidence taken at the hearing of the application before either board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and transmitted within thirty days after the petition for appeal is filed with the court or judge, in vacation.

(c) If there was an appearance by or on behalf of the taxpayer before either board, or if actual notice, certified by the board, was given to the taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court from the record as so certified: *Provided,* That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a board of equalization and review or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission shall schedule a hearing for the purpose of taking additional evidence at any time within ninety days of the remand order that is convenient for the county commission and for the parties to the appeal. If, however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the taxpayer before the board, or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit court.

(d) If, upon the hearing of appeal, it is determined that any property has been assessed at more than sixty percent of its true and actual value determined as provided in this chapter, the circuit court shall, by an order entered of record, correct the assessment, and fix the assessed value of the property at sixty percent of its true and actual value. A copy

of the order or orders entered by the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or Tax Commissioner was present and defended the interest of the state, county and district. If it be ascertained that any property has been valued too high, and that the taxpayer has paid the excess tax, it shall be refunded or credited to the taxpayer in accordance with the provisions of section twenty-five-a of this article, and if not paid, he or she shall be relieved from the payment thereof. If it is ascertained that any property is valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix it at sixty percent of its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real property, to the Auditor, the county clerk and the sheriff. However, if the order pertains only to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff and it shall be the duty of the Auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where the property is situated for the current year. The order shall also be filed in the office of the Auditor and clerk of the county commission. The circuit court shall review the record submitted from the board. If the court determines that the record is adequate, it shall establish a briefing and argument schedule that will result in the appeal being submitted to the court for decision within a reasonable time, but not to exceed eight months after the appeal is filed. All final decisions or orders of the circuit court shall be issued within a reasonable time, not to exceed ninety days, from the date the last brief is filed and the case is submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of valuation to the Supreme Court of

Appeals if the assessed value of the property is $50,000 or more, and either party may appeal a question of classification or taxability.

(e) All persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief.

(f) *Effective date.* -- The amendments to this section enacted in 2010 shall apply to tax years beginning after December 31, 2011.

§11-3-25a. Payment of taxes that become due while appeal is pending.

(a) All taxes levied and assessed against the property for the year on which a protest or an appeal has been filed by the taxpayer as provided in section twenty-four or twenty-four-b of this article shall be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the circuit court, having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless the delinquent taxes and interest due are paid in full within thirty days after taxes for the second half of the tax year become delinquent.

(b) In the event the order of a court becomes final and the order results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the amount of the overpayment shall be refunded to the taxpayer if the overpayment is $25,000 or less within thirty days after the time for appealing the decision or order expires or, if the decision or order is appealed, within thirty days of the date the appeals court turns down the appeal: *Provided,* That, if the taxpayer's protest before the county commission below was heard pursuant to the provisions of section twenty-four-b of this article, the refund shall be paid pursuant to the

21 provisions of that section. If the overpayment is more than
22 $25,000, a credit in the amount of the overpayment shall be
23 established by the county sheriff and allowed as a credit
24 against taxes owed up to the following two tax years:
25 *Provided, however,* That the county commission may elect to
26 refund the amount of overpayment rather than having a credit
27 established as provided in this section: *Provided further,* That
28 if any portion of the overpayment remains unused after the
29 date on which taxes payable for the second half of the second
30 tax year following the tax year of the overpayment become
31 delinquent, that portion shall be refunded to taxpayer by the
32 county sheriff no later than thirty days after that date or thirty
33 days from the date that the circuit court order becomes final,
34 whichever date occurs later. Whenever an overpayment is
35 refunded or credited under this section, the county shall pay
36 interest at the rate established in section seventeen and
37 seventeen-a, article ten of this chapter for overpayments of
38 taxes collected by the Tax Commissioner, which interest
39 shall be computed from the date the overpayment was
40 received by the sheriff to the date of the refund check or the
41 date the credit is actually taken against taxes that become due
42 after the order of the court becomes final.

§11-3-32. Effective date of amendments.

1 Unless specified otherwise in this article, all amendments
2 to this article adopted in the year 2010 shall apply to the
3 assessment years beginning on or after July 1, 2011.

§11-3-33. Rules.

1 The Tax Commissioner is hereby authorized to
2 promulgate emergency rules and other rules in accordance
3 with the provisions of article three, chapter twenty nine-a of
4 this code as necessary or convenient for administration and
5 interpretation of this article.

ARTICLE 6K. ASSESSMENT OF INDUSTRIAL PROPERTY AND NATURAL RESOURCES PROPERTY.

§11-6K-1. Time and basis of assessments; true and actual value; and returns of property to Tax Commissioner.
§11-6K-2. Definitions.
§11-6K-3. Form and manner of making return; failure to timely make return; penalties.
§11-6K-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; and notification to taxpayers.
§11-6K-5. Informal petition to Tax Commissioner for review of tentative appraisals.
§11-6K-6. Final appraisal of industrial property and natural resources property by Tax Commissioner; appraisals sent to assessors; appeals of Tax Commissioner's appraisals.
§11-6K-7. Effective date.
§11-6K-8. Rules.

§11-6K-1. Time and basis of assessments; true and actual value; and returns of property to Tax Commissioner.

(a) All industrial property and natural resources property shall be assessed annually as of the assessment date at sixty percent of its true and actual value.

(b) If required by the Tax Commissioner, all owners or operators of natural resources property, except oil-producing property, natural gas-producing property and managed timberland, shall, on or before May 1 preceding the July 1 assessment date, make a return to the Tax Commissioner and, if requested in writing by the assessor of the county where situated, to the county assessor, at a time and in the form specified by the Tax Commissioner, of all applicable natural resources property owned by them. Tax returns required to be filed pursuant to this section may be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may require the filing of all information which would be useful in valuing the property covered by the returns. Upon written application by the taxpayer filed prior to the due date of any return required to be filed by this section, the Tax Commissioner may for reasonable cause

shown grant an extension of no more than one month in the due date of any return.

(c) If required by the Tax Commissioner, all owners or operators of industrial property, oil-producing property and natural gas-producing property, shall, on or before August 1 of the assessment year, make a return to the Tax Commissioner and, if requested in writing by the assessor of the county where situated, to the county assessor, at a time and in the form specified by the Tax Commissioner, of all industrial property, oil-producing property and natural gas-producing property, owned by them. Tax returns required to be filed pursuant to this section may be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may require the filing of all information which would be useful in valuing the property covered by the returns. Upon written application by the taxpayer filed prior to the due date of any return required to be filed by this section, the Tax Commissioner may for reasonable cause shown grant an extension of no more than one month in the due date of any return.

§11-6K-2. Definitions.

As used in this article:

(1) "Active coal mining property" means a mineable bed of coal on a property or portion of a property involved in a permitted mining operation. Each and every bed of coal being mined in a permitted mining operation is a separate active mining property.

(2) "Industrial property" means the real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(3) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of its size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is certified as managed timberland by the Division of Forestry.

(4) "Natural gas-producing property" means the property from which natural gas has been produced or extracted at any time during the calendar year preceding the assessment date. Natural gas producing-property includes the property interest or interests underlying an area of up to one hundred twenty-five acres of surface per well for property with active wells on the parcel.

(5) "Natural resources property" means any of the following: Active coal mining property, reserve coal property, natural gas-producing property, oil-producing property, managed timberland or other natural resources property.

(6) "Oil-producing property" means property from which oil has been produced or extracted at any time during the calendar year preceding the assessment date. Oil-producing property includes the interest or interests underlying an area of up to forty acres of surface per well with one or more active wells on the parcel.

(7) "Operator" means an individual, limited liability company, partnership, corporation, joint venture or other enterprise which proposes to or does locate, drill, produce, manage or abandon any oil and/or natural gas well or which is engaged in actively obtaining or preparing to obtain coal and/or its by-products from the earth's crust on an active coal mining property.

(8) "Reserve coal property" means any property for which coal rights are part of the owned estate and which is not part of an active coal mining property.

§11-6K-3. Form and manner of making return; failure to timely make return; penalties.

(a) All returns required to be made to the Tax Commissioner under this article shall be made in conformity with any reasonable requirements of the Tax Commissioner of which the person making the return shall have had notice, and shall be made upon forms prescribed by the Tax Commissioner who is invested with full power and authority to prescribe the forms required from any owner, operator or producer that may be of use to the Tax Commissioner in determining the true and actual value of the properties of the owners, operators or producers.

(b) All returns shall be signed and sworn to by the owner, operator or producer if a natural person, or, if the owner, operator or producer shall be a limited liability company, corporation, partnership, joint venture or other enterprise, shall be signed and sworn to by its president, vice president, secretary or other individual authorized to act on behalf of the taxpayer.

(c) If any owner, operator or producer fails to make a return within the time required by section one of this article, it shall be the duty of the Tax Commissioner to take steps as necessary to compel compliance and to enforce any and all penalties imposed by law for failure to do so.

(d) Any owner, operator or producer, whether a natural person, limited liability company, corporation, partnership, joint venture or other enterprise, willfully failing to make a return within thirty days from the day it is herein required shall be guilty of a misdemeanor and, upon conviction

thereof, fined $100 for each month the failure continues. In addition, any penalties provided in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report for ad valorem taxation purposes may be applied to any owner of property required to make a return pursuant to this section.

§11-6K-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; and notification to taxpayers.

(a) All returns delivered to the Tax Commissioner shall be examined by him or her, and if found insufficient in form or in any respect defective, imperfect or not in compliance with law, he or she shall compel the person delivering the return to make it in proper and sufficient form in all respects as required by law.

(b) If any owner, operator or producer fails to make a required return, the Tax Commissioner shall proceed to obtain the facts and information required to be furnished by the returns.

(c) For the purposes of ascertaining the correctness of any return filed pursuant to this article or of valuing the property of any industrial taxpayer or natural resources property owner or operator, the Tax Commissioner may exercise all of the powers and authority granted to him or her by sections five-a, five-b and five-c, article ten of this chapter.

(d) Using information provided on the returns and all other pertinent evidence, information and data he or she has been able to procure, the Tax Commissioner shall annually value and make tentative appraisals of all industrial property and natural resources property as provided in section ten, article one-c of this chapter.

(e) On or before October 15 of the assessment year, the Tax Commissioner shall complete the preparation of tentative appraisals of all industrial property and natural resources property and shall notify the owner or operator affected thereby of the amount of the tentative appraisals: *Provided,* That in the case of oil-producing property, natural gas-producing property and managed timberland, the Tax Commissioner shall complete the preparation of tentative appraisals and notify the affected owner or operator by December 1 of the assessment year, and: *Provided, however,* That no notification shall be required where the total increase in the aggregate amount of the tentative appraisals to the owner or operator affected thereby does not exceed $1,000 and the total tentative appraisals did not increase by more than ten percent from the prior year's appraisals. Notification may, at the reasonable discretion of the Tax Commissioner, be: (1) By written notice deposited in the United States mail, addressed to the owner or operator at the principal office or place of business of the owner or operator; (2) by electronic notification; or (3) by any other means designed to communicate the tentative appraisal information to the owner or operator in a timely and efficient manner and in a convenient useable form. Any notice required to be provided under this section to an owner or operator shall also be provided by the Tax Commissioner to the assessor of the county in which the property is located. The Tax Commissioner shall retain in his or her office true copies of tentative appraisals and of the underlying work sheets used to compute the tentative appraisals, all of which shall be available for inspection by any owner or operator or his or her duly authorized representative.

§11-6K-5. Informal petition to Tax Commissioner for review of tentative appraisals.

(a) A taxpayer who is of the opinion that the tentative appraisal of its industrial property or natural resources

3 property, except oil-producing property, natural gas-
4 producing property and managed timberland, does not reflect
5 the true and actual value of the property or is otherwise
6 improperly valued may, after receiving its tentative appraisal
7 and on or before November 15 of the assessment year,
8 informally petition the Tax Commissioner requesting a
9 review of the tentative appraisal. Likewise, an assessor who
10 is of the opinion that the tentative appraisal of any industrial
11 property or natural resources property, except oil-producing
12 property, natural gas-producing property and managed
13 timberland, located in the county does not reflect the true and
14 actual value of the property or is otherwise improperly valued
15 may, after receiving the tentative appraisal and on or before
16 November 15 of the assessment year, informally petition the
17 Tax Commissioner requesting a review of the tentative
18 appraisal. The Tax Commissioner may require the petition
19 be made on a written form prescribed by the Tax
20 Commissioner. At the time a petition is filed by a taxpayer
21 with the Tax Commissioner, the petitioner shall provide a
22 copy of the petition to the assessor of the county in which the
23 property is located. At the time a petition is filed by an
24 assessor with the Tax Commissioner, the petitioner shall
25 provide a copy of the petition to the taxpayer involved.

26 (b) At the petitioner's request, the Tax Commissioner or
27 his or her representative shall meet with the petitioner or the
28 petitioner's representative to discuss the petition at a time and
29 place designated at least five working days in advance by the
30 Tax Commissioner after the petition is filed. If the petitioner
31 is unable to appear and meet with the Tax Commissioner at
32 the time and place set by the Tax Commissioner, the
33 petitioner may submit written evidence to support the petition
34 if it is submitted before the date of the meeting.

35 (c) The Tax Commissioner shall consider and rule on
36 each informal petition filed under this section on or before
37 January 15 of the tax year. If the Tax Commissioner agrees

with the petition he or she shall modify the tentative appraisal accordingly. The Tax Commissioner shall then notify the petitioner and assessor of the county in which the property is located in writing of his or her decision and shall include supporting data that the assessor might need to evaluate the appraisal.

§11-6K-6. Final appraisal of industrial property and natural resources property by Tax Commissioner; appraisals sent to assessors; appeals of Tax Commissioner's appraisals.

(a) The Tax Commissioner shall finalize the tentative appraisals made pursuant to section four of this article and make his or her final appraisals of industrial property and natural resources property on or before December 15 of the assessment year.

(b) On or before December 15 of the assessment year, the Tax Commissioner shall forward each industrial property and natural resources property appraisal to the county assessor of the county in which that property is located. In so doing, The Tax Commissioner shall identify those appraisals that may still be under review under section five of this article. The assessor shall then multiply each appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The Tax Commissioner shall supply supporting data that the assessor might need to evaluate the appraisal.

(c) Any taxpayer claiming to be aggrieved by any assessment made pursuant to this article may appeal the assessment as provided under the provisions of article three of this chapter: *Provided,* That if the assessment exceeds sixty percent of the final appraisal by the Tax Commissioner, the taxpayer may notify the Tax Commissioner in writing of this error, whereupon he or she shall, if the error is

24 confirmed, instruct the assessor in writing to lower the
25 assessment to sixty percent of the final appraisal. The
26 assessor shall, upon receipt of instruction from the Tax
27 Commissioner, lower the assessment as required.

§11-6K-7. Effective date.

1 The provisions of this article enacted in the year 2010
2 shall be effective for the assessment years and the tax years
3 beginning on or after July 1, 2011.

§11-6K-8. Rules.

1 The Tax Commissioner is hereby authorized to
2 promulgate emergency rules and other rules in accordance
3 with the provisions of article three, chapter twenty nine-a of
4 this code as necessary or convenient for administration and
5 interpretation of this article.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-12. County basic foundation; total basic state aid allowance.

1 (a) The basic foundation program for each county for the
2 fiscal year shall be the sum of the amounts computed in
3 accordance with the provisions of sections four, five, six,
4 seven, eight, nine and ten of this article. On the first working
5 day of July in each year, the State Board shall determine the
6 basic foundation program for each county for that fiscal year.
7 Data used in the computations relating to net and adjusted
8 enrollment, and the number of professional educators, shall
9 be for the second month of the prior school term.
10 Transportation expenditures used in these computations shall

be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided,* That prior to such adjustment, the State Tax Commissioner shall provide the State Board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the Tax Commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the Tax Commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the Tax Commissioner: *Provided,* That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds

only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State Board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State Board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

CHAPTER 186

(Com. Sub. for H. B. 4035 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13V-7 of said code; and to amend and reenact §11-21-54 and §11-21-74 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; requiring taxpayers with a tax liability of $10,000 or more to file electronically; requiring electronic filing for certain tax preparers and employers; providing exceptions; and providing a $10,000 tax liability threshold amount to require taxpayers to pay by electronic funds transfers.

Be it enacted by the Legislature of West Virginia:

That §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13V-7 of said code be amended and reenacted; and that §11-21-54 and §11-21-74 of said code be amended and reenacted, all to read as follows:

Article

10. Tax Procedure and Administration Act.
13V. Workers' Compensation Debt Reduction Act.
21. Personal Income Tax.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5t. Payment by electronic funds transfer.
§11-10-5z. Electronic filing for certain persons.

§11-10-5t. Payment by electronic funds transfers.

(a) The term "electronic funds transfer" means and includes automated clearinghouse debit, automated clearinghouse credit, wire transfer and any other means recognized by the Tax Commissioner for payment of taxes.

(b) The Tax Commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

(c) The rules shall set forth the following:

(1) Acceptable indicia of timely payment;

(2) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(3) Which types of taxes to which electronic filing requirements apply for any given tax year and implementation dates: *Provided,* That the type of tax to which electronic funds transfer requirements apply during the first tax year is personal income tax withholding by employers;

(4) The dollar amount of tax liability per year which, when exceeded, requires or permits electronic funds transfer. Unless and until a legislative rule is promulgated or this section is amended, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding year was less than $120,000: *Provided,* That for tax years beginning on or after January 1, 2011, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding tax year was less than $10,000;

(5) What, if any, exceptions are allowable, and alternative methods of payment to be used for any exceptions;

(6) Procedures for making voluntary electronic funds transfer payments;

(7) Any provisions needed to implement the civil penalty created by this section; and

(8) Any other provisions necessary to ensure the timely implementation of electronic funds transfer payments.

(d) In addition to any other additions and penalties which may be applicable, there is a civil penalty for failing or refusing to use an appropriate electronic funds transfer method when required to do so. The amount of this penalty is three percent of the total tax liability which is or was to be paid by electronic funds transfer for any tax for which electronic funds transfer methods are required to be used by the taxpayer.

(e) The provisions of this section are not intended to affect the provisions of other sections of this chapter concerning filing of returns or any other provisions which are not in direct conflict with this section.

(f) The State Treasurer shall adopt any procedures or rules necessary or convenient for implementing electronic funds transfers of tax payments authorized by this section and rules adopted by the Tax Commissioner. The treasurer shall draft any procedures and rules adopted in consultation with the Tax Commissioner and the procedures and rules may not conflict with this section or rules adopted by the Tax Commissioner.

(g) The provisions of this section become effective on or after January 1, 1998.

§11-10-5z. Electronic filing for certain persons.

(a) For tax years beginning on or after January 1, 2009, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $100,000 during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article. For tax years beginning on or after January 1, 2011, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than $10,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she determines necessary. All rules shall be promulgated pursuant to article three, chapter twenty-nine-a of this code.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.

(a) *General rule.* -- Except as provided in subsection (b) of this section, taxes levied by this article are due and payable in periodic installments as follows:

(1) *Tax of $50 or less per month.* -- If a person's aggregate annual tax liability under this article and article thirteen-a of this chapter is reasonably expected to be $50 or less per month, no installment payments of tax are required under this section during that taxable year.

(2) *Tax of more than $1,000 per month.* -- For taxpayers whose aggregate estimated tax liability under this article and article thirteen-a of this chapter exceeds $1,000 per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: *Provided,* That the installment payment otherwise due under this subdivision on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15 each year. When this subdivision applies, the taxpayer shall, on or before the due date specified in this subdivision, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner: *Provided, however,* That the installment payment otherwise due under this paragraph on or before June 30 each year shall be remitted to the Tax Commissioner on or before June 15.

(3) *Tax of $1,000 per month or less.* -- For taxpayers whose estimated tax liability under this article is $1,000 per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued. When this subdivision applies, the taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(b) *Exception.* -- Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

45 (c) *Remittance by electronic funds transfer.* -- When the
46 taxpayer's annual aggregate liability for tax under this article
47 and article thirteen-a of this chapter exceeds $50,000 for the
48 prior tax year, payments of estimated tax required by this
49 article and article thirteen-a during the then current tax year
50 shall be by electronic funds transfer, in accordance with rules
51 of the Tax Commissioner and rules of the State Treasurer,
52 except as otherwise permitted by the Tax Commissioner:
53 *Provided,* That for tax years beginning on or after January 1,
54 2011, when the taxpayer's annual aggregate liability for tax
55 under this article and article thirteen-a of this chapter exceeds
56 $10,000 for the prior tax year, payments of estimated tax
57 required by this article and article thirteen-a during the then
58 current tax year shall be by electronic funds transfer, in
59 accordance with rules of the Tax Commissioner and rules of
60 the State Treasurer, except as otherwise permitted by the Tax
61 Commissioner.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-54. Electronic filing for certain tax preparers.
§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

§11-21-54. Electronic filing for certain tax preparers.

1 (a) If an income tax return preparer filed more than one
2 hundred personal income tax returns for any taxable year that
3 began after January 1, 2005, and if during calendar year 2006
4 or any calendar year thereafter that income tax preparer
5 prepares one or more personal income tax returns using tax
6 preparation software for a previous taxable year, then for
7 each current taxable year all unamended personal income tax
8 returns prepared by that preparer shall be filed electronically,
9 except as provided in subsections (c) and (d) of this section:
10 *Provided,* That if an income tax return preparer filed more
11 than twenty-five personal income tax returns for any tax year
12 that began on or after January 1, 2010, and if that income tax

13 preparer prepares one or more personal income tax returns
14 using tax preparation software, then for each tax year
15 beginning on or after January 1, 2011, all unamended
16 personal income tax returns prepared by that preparer shall be
17 filed electronically, except as provided in subsections (c) and
18 (d) of this section.

19 (b) For purposes of this section:

20 (1) "Income tax preparer" means any person who
21 prepares, in exchange for compensation, or who employs
22 another person to prepare, in exchange for compensation, all
23 or a substantial portion of any return for a taxpayer for the tax
24 imposed by this article and who is identified as the preparer
25 for the taxpayer on the return. A person who only performs
26 those acts described in clauses (i) through (iv) of Section
27 7701(a)(36)(B) of the Internal Revenue Code with respect to
28 the preparation of a return for a trust or estate for which he or
29 she is a fiduciary or a return for a partnership of which he or
30 she is a partner is not an income tax preparer for purposes of
31 this section.

32 (2) "Electronic filing" or "e-filing" means filing using
33 electronic technology such as computer modem, magnetic
34 media, optical disk, facsimile machine, telephone or other
35 technology approved by the Tax Commissioner, in such
36 manner as he or she deems acceptable.

37 (3) "Tax preparation software" means any computer
38 software program intended for accounting or tax return
39 preparation.

40 (c) Subsection (a) of this section shall cease to apply to
41 an income tax preparer if, for the previous taxable year, that
42 income tax preparer prepared no more than twenty-five
43 personal income tax returns.

(d) This section first applies to personal income tax returns required to be filed for taxable years beginning January 1, 2006. This section does not require electronic filing of: (1) Returns that were not required to be filed for taxable years beginning prior to that date; (2) returns for prior taxable years beginning prior to that date; or (3) amended returns for any taxable year.

(e) An income tax preparer who is required to e-file under this section but does not do so is liable for a penalty in the amount of $25 for each return prepared that is not e-filed, unless the preparer shows that the failure to do so is due to technical inability to comply on the part of a tax preparer or a documented election by a client not to file electronically.

(f) The commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she deems necessary.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

(a) *General.* -- Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of the calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. Where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by regulation permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year. The Tax Commissioner may, by nonemergency

15 legislative rules promulgated pursuant to article three, chapter
16 twenty-nine-a of this code, change the minimum amounts
17 established by this subsection. The Tax Commissioner may,
18 if he or she determines necessary for the protection of the
19 revenues, require any employer to make the return and pay to
20 him or her the tax deducted and withheld at any time or from
21 time to time. Notwithstanding the provisions of this
22 subsection, on or after January 1, 2009, every employer
23 required to deduct and withhold tax under this article shall
24 file a withholding return as prescribed by the Tax Commissioner
25 and pay over to the Tax Commissioner the taxes required to
26 be deducted and withheld, in accordance with the procedures
27 established by the Internal Revenue Service pursuant to
28 Section 3402 of the Internal Revenue Code.

29 (b) *Monthly returns and payments of withheld tax on and*
30 *after January 1, 2001.* -- Notwithstanding the provisions of
31 subsection (a) of this section, on and after January 1, 2001,
32 every employer required to deduct and withhold tax under
33 this article shall, for each of the first eleven months of the
34 calendar year, on or before the twentieth day of the
35 succeeding month and for the last calendar month of the year,
36 on or before the last day of the succeeding month, file a
37 withholding return as prescribed by the Tax Commissioner
38 and pay over to the Tax Commissioner the taxes required to
39 be deducted and withheld, if the withheld taxes aggregate
40 $250 or more for the month, except any employer with
41 respect to whom the Tax Commissioner may have by
42 regulation provided otherwise in accordance with the
43 provisions of subsection (a) of this section. Notwithstanding
44 the provisions of this subsection, on and after January 1,
45 2009, every employer required to deduct and withhold tax
46 under this article shall file a withholding return as prescribed
47 by the Tax Commissioner and pay over to the Tax
48 Commissioner the taxes required to be deducted and
49 withheld. The due dates for returns and payments shall be
50 established by the Tax Commissioner to match as closely as
51 practicable the due dates in effect for federal income tax

purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(c) *Annual returns and payments of withheld tax of certain domestic and household employees.* -- Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner and annually remit to the Tax Commissioner West Virginia personal income taxes deducted and withheld for the employees. The Tax Commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection. Notwithstanding the provisions of this subsection, on or after January 1, 2009, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for annual returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(d) *Deposit in trust for Tax Commissioner.* -- Whenever any employer fails to collect, truthfully account for or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep

the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(e) *Accelerated payment.* -- (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after December 31, 1990, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded $100,000 shall remit the tax attributable to the first fifteen days of June each year on or before June 23: *Provided,* That on and after June 1, 2007, the provisions of this subsection that require the accelerated payment on or before June 23 of the tax imposed by this article are no longer effective and any tax due and owing shall be payable in accordance with subsection (a) of this section.

(2) For purposes of complying with subdivision (1) of this subsection, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer's election, the employer may remit an amount equal to fifty percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds $100,000, the employer shall remit the tax attributable to the first fifteen days of June each year on or

before June 23, as provided in subdivision (2) of this subsection.

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(f) The amendments to this section enacted in the year 2006 are effective for tax years beginning on or after January 1, 2006.

(g) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer on or before February 28 following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(h) Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article: *Provided,* That for any tax period beginning on or after January 1, 2011, any employer with fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of $25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

CHAPTER 187

(H. B. 4312 - By Delegates White and Campbell)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §11-10-18 of the Code of West Virginia, 1931, as amended, specifying the required addition to tax to be paid if the failure to timely file the required return of a tax administered by the West Virginia Tax Commissioner is for not more than one month from the date the return is due.

Be it enacted by the Legislature of West Virginia:

That §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-18. Additions to tax.

1 (a) *Failure to file tax return or pay tax due.* --

2 (1) In the case of failure to file a required return of any
3 tax administered under this article on or before the date
4 prescribed for filing such return (determined with regard to
5 any extension of time for filing), unless it is shown that such
6 failure is due to reasonable cause and not due to willful

neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided,* That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided,* That the addition to tax shall be imposed only on the net amount of tax due;

(3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in paragraph (1) which is not so shown within fifteen days of the date of notice and demand therefore, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided,* That this addition to tax shall be imposed only on the net amount of tax due.

(b) *Limitation and special rule.* --

(1) Additions under more than one paragraph:

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2);

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.

(2) *Amount of tax shown more than amount required to be shown.* -- If the correct amount of tax due is less than the amount shown on the return, paragraphs (1) and (2) of subsection (a) shall only apply to the lower amount.

(3) *Exception for estimated tax.* -- Subsection (a) shall not apply to any failure to pay any estimated tax.

(c) *Negligence or intentional disregard of rules and regulations.* -- If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate:

Provided, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided in subsection (a), and the Tax Commissioner shall state in his or her notice of assessment the reason or reasons for imposing this addition to tax with sufficient particularity to put the taxpayer on notice regarding why it was assessed.

(d) *False or fraudulent return.* -- In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the Tax Commissioner. In the case of a joint personal income tax return under article twenty-one of this chapter, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse.

(e) *Additions to tax treated as tax.* -- Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.

(f) *Penalties for promoting abusive tax shelters and for failure to report listed transactions.* --

(1) A penalty is hereby imposed on every person who engages in activities promoting abusive tax shelters described in Section 6700(a) of the Internal Revenue Code of 1986, or any subsequent corresponding provisions of the Internal Revenue Code, as from time to time amended, and who is subject to a penalty imposed thereunder, whether or not such penalty has been imposed, where such activities affect tax returns required to be filed with the Tax Commissioner. The

amount of the penalty imposed hereunder shall be equal to fifty percent of the gross income derived from activities by such person which are subject to that penalty under paragraph (2)(A) of said section 6700(a) for making a false or fraudulent statement; and shall be the lesser of $1,000 or one hundred percent of such gross income when the activity is subject to that penalty under paragraph (1) of said section 6700(a).

(2) For audits of returns commencing on or after July 1, 2006, when it appears that any part of the deficiency for which an assessment is made is due to failure to disclose a listed transaction or a reportable transaction other than a listed transaction, as the terms are defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding provision of the Internal Revenue Code, as from time to time amended, on the taxpayer's federal income tax return, there shall be imposed a penalty. In the case of a listed transaction the amount of the penalty shall be equal to seventy percent of the amount of the deficiency, and in the case of other reportable transactions the amount of the penalty shall be equal to thirty-five percent of the amount of the deficiency.

(g) *Coordination with other penalties*. -- Unless provided otherwise by rules, the penalties imposed by this section are in addition to any other penalty imposed by this article or article ten-e of this chapter.

CHAPTER 188

(Com. Sub. for H. B. 4335 - By Delegates H. White, Campbell and Kominar)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT to amend and reenact §11-12-5 of the Code of West Virginia, 1931, as amended, relating to the business registration tax generally; specifying the business registration tax and business registration certificate are subject to certain exemptions; and specifying that the tax is imposed for each and every issuance, reissuance or reinstatement of a business registration certificate.

Be it enacted by the Legislature of West Virginia:

That §11-12-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

(a) *Registration period.* -- All business registration certificates issued under the provisions of section four of this article are for the period of one year beginning July 1 and ending June 30 of the following year: *Provided,* That beginning on or after July 1, 1999, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on July 1 of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning July 1, 1999, and ending June 30, 2000, upon receipt of $15 for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after July 1, 2010, shall not be subject to the foregoing requirement that it be renewed, but shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or cancelled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after July 1, 2010, reference to renewal of the business registration certificate shall refer to the issuance of a new business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or to reinstatement of a business registration certificate or to reinstatement of a business certificate previously suspended by the Tax Commissioner. Subject to the exemptions, exceptions and requirements other than the $4,000 or less gross income exemption, set forth in section three of this article, on or after July 1, 2010, the business registration certificate shall be issued upon payment of a tax of $30 to the Tax Commissioner for new issuances of the business registration certificate or for issuances of the business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or for reinstatement of a business registration

38 certificate previously suspended by the Tax Commissioner,
39 along with any applicable delinquent fees, interest, penalties
40 and additions to tax. Subject to the exemptions, exceptions
41 and requirements set forth in section three of this article, the
42 $30 tax shall be paid each and every time there is an
43 issuance, reissuance or reinstatement of a business
44 registration certificate, along with any applicable delinquent
45 fees, interest, penalties and additions to tax: *Provided,* That
46 the $4,000 or less gross income exemption set forth in
47 subdivision (1), subsection (d), section three of this article
48 does not apply.

49 (b) *Revocation or suspension of certificate.* --

50 (1) The Tax Commissioner may cancel or suspend a
51 business registration certificate at any time during a
52 registration period if:

53 (A) The registrant filed an application for a business
54 registration certificate, or an application for renewal thereof,
55 that was false or fraudulent.

56 (B) The registrant willfully refused or neglected to file a
57 tax return or to report information required by the Tax
58 Commissioner for any tax imposed by or pursuant to this
59 chapter.

60 (C) The registrant willfully refused or neglected to pay
61 any tax, additions to tax, penalties or interest, or any part
62 thereof, when they became due and payable under this
63 chapter, determined with regard to any authorized extension
64 of time for payment.

65 (D) The registrant neglected to pay over to the Tax
66 Commissioner on or before its due date, determined with
67 regard to any authorized extension of time for payment, any

tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant's purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(F) The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year.

(2) On or after July 1, 2010, a prospective registrant or a former registrant for which a business registration certificate has been suspended, cancelled or revoked pursuant to the provisions of this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate upon payment of all outstanding delinquent fees, taxes, interest, additions to tax and penalties, in addition to payment to the Tax Commissioner of a penalty in the amount of $100. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has provided security acceptable to and authorized by the Tax Commissioner, payable to the Tax Commissioner, sufficient to secure all delinquent fees, taxes, interest, additions to tax and penalties owed by the prospective registrant. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has entered into a payment plan approved by the Tax Commissioner by which liability for all delinquent fees, taxes, interest,

101 additions to tax and penalties will be paid in due course and
102 without significant delay. Failure of any registrant to comply
103 with a payment plan pursuant to this provision shall be
104 grounds for immediate suspension or revocation of the
105 registrant's business registration certificate.

106 (3) On and after July 1, 2010, a prospective registrant or
107 a former registrant for which a business registration
108 certificate has been suspended, cancelled or revoked pursuant
109 to the provisions of any article of this code other than this
110 article may apply for a new business registration certificate
111 or for reinstatement of a suspended business registration
112 certificate, only if the prospective or former registrant has
113 complied with all applicable statutory and regulatory
114 requirements for renewal, issuance or reinstatement of the
115 business registration certificate and upon payment to the Tax
116 Commissioner of a penalty in the amount of $100.

117 (4) Except pursuant to exceptions specified in this code,
118 before canceling, revoking or suspending any business
119 registration certificate, the Tax Commissioner shall give
120 written notice of his or her intent to suspend, revoke or cancel
121 the business registration certificate of the taxpayer, the reason
122 for the suspension, revocation or cancellation, the effective
123 date of the cancellation, revocation or suspension and the
124 date, time and place where the taxpayer may appear and
125 show cause why such business registration certificate should
126 not be canceled, revoked or suspended. This written notice
127 shall be served on the taxpayer in the same manner as a
128 notice of assessment is served under article ten of this
129 chapter, not less than twenty days prior to the effective date
130 of the cancellation, revocation or suspension. The taxpayer
131 may appeal cancellation, revocation or suspension of its
132 business registration certificate in the same manner as a
133 notice of assessment is appealed under article ten-a of this
134 chapter. The filing of a petition for appeal does not stay the

effective date of the suspension, revocation or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation, revocation or suspension until another date certain.

(5) On or before July 1, 2005, the Tax Commissioner shall propose for promulgation legislative rules establishing ancillary procedures for the Tax Commissioner's suspension of business registration certificates for failure to pay delinquent personal property taxes pursuant to paragraph (F), subdivision (1) of this section. The rules shall at a minimum establish any additional requirements for the provision of notice deemed necessary by the Tax Commissioner to meet requirements of law; establish protocols for the communication and verification of information exchanged between the Tax Commissioner, sheriffs and others; and establish fees to be assessed against delinquent taxpayers that shall be deposited into a special fund which is hereby created and expended for general tax administration by the Tax Division of the Department of Revenue and for operation of the Tax Division. Upon authorization of the Legislature, the rules shall have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the Tax Commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F), subdivision (1) of this section or under any other provision of this code prior to the authorization of the rules.

(c) *Refusal to renew.* -- The Tax Commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax

administered by the Tax Commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all the delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon terms as he or she specifies, the Tax Commissioner may enter into an installment payment agreement with the taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the Tax Commissioner may suspend or cancel the business registration certificate in the manner provided in this section.

(d) *Refusal to renew due to delinquent personal property tax.* -- The Tax Commissioner shall refuse to issue or renew a business registration certificate when informed in writing, signed by the county sheriff, that personal property owned by the applicant and used in conjunction with the business activity of the applicant is subject to delinquent property taxes. The Tax Commissioner shall forthwith notify the applicant that the commissioner will not act upon the application until information is provided evidencing that the taxes due are either exonerated or paid.

(e) *Refusal to issue, revocation, suspension and refusal to renew business registration certificate of alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue, revocation, suspension or refuse to renew.* --

(1) The Tax Commissioner may refuse to issue a business registration certificate, or may revoke a business registration certificate or may suspend a business registration certificate or may refuse to renew a business registration certificate for any business determined by the Tax Commissioner to be an

202 alter ego, nominee or instrumentality of a business that has
203 previously been the subject of a lawful refusal to issue a
204 business registration certificate or of a lawful revocation,
205 suspension or refusal to renew a business registration
206 certificate pursuant to this section, and for which the business
207 registration certificate has not been lawfully reinstated or
208 reissued.

209 (2) For purposes of this section, a business is presumed
210 to be an alter ego, nominee or instrumentality of another
211 business or other businesses if:

212 (A) More than twenty percent of the real assets or more
213 than twenty percent of the operating assets or more than
214 twenty percent of the tangible personal property of one
215 business are or have been transferred to the other business or
216 businesses, or are or have been used in the operations of the
217 other business or businesses, or more than twenty percent of
218 the real assets or more than twenty percent of the operating
219 assets or more than twenty percent of the tangible personal
220 property of one business are or have been used to
221 collateralize or secure debts or obligations of the other
222 business or businesses;

223 (B) Ownership of the businesses is so configured that the
224 attribution rules of either Internal Revenue Code section 267
225 or Internal Revenue Code section 318 would apply to cause
226 ownership of the businesses to be attributed to the same
227 person or entity; or

228 (C) Substantive control of the businesses is held or
229 retained by the same person, entity or individual, directly or
230 indirectly, or through attribution under paragraph (B) of this
231 subdivision.

CHAPTER 189

**(Com. Sub. for S. B. 185 -
By Senators McCabe and Foster)**

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13AA-1, §11-13AA-2, §11-13AA-3, §11-13AA-4, §11-13AA-5, §11-13AA-6, §11-13AA-7, §11-13AA-8, §11-13AA-9, §11-13AA-10, §11-13AA-11, §11-13AA-12 and §11-13AA-13, all relating generally to allowing tax incentives when computing business franchise and West Virginia income tax liabilities, corporate or personal, as the case may be, for profits attributed to the use of patents directly used in a manufacturing process or product developed in this state or for royalties generated from patents directly used in a manufacturing process or product developed in this state; providing short title, legislative findings and purpose; defining certain terms; specifying terms, conditions and rules for taking of tax credits; providing for forfeiture of unused credit after period of years; allowing Tax Commissioner to prescribe rules; requiring periodic reports by Tax Commissioner on cost and effect of tax incentives; providing rule of construction; providing effective date; and specifying termination 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 §11-13AA-1, §11-13AA-

2, §11-13AA-3, §11-13AA-4, §11-13AA-5, §11-13AA-6, §11-13AA-7, §11-13AA-8, §11-13AA-9, §11-13AA-10, §11-13AA-11, §11-13AA-12 and §11-13AA-13, all to read as follows:

ARTICLE 13AA. COMMERCIAL PATENT INCENTIVES TAX ACT.

§11-13AA-1. Short title.
§11-13AA-2. Legislative findings and purpose.
§11-13AA-3. Definitions.
§11-13AA-4. Tax incentive for developing patents in this state.
§11-13AA-5. Tax credit for use of a patent in a manufacturing process or product in this state that was developed in this state.
§11-13AA-6. Transfer of credit to successor.
§11-13AA-7. Identification of a patent and required records.
§11-13AA-8. Failure to keep records of a patent for which credit allowed.
§11-13AA-9. Tax credit review and accountability.
§11-13AA-10. Promulgation of rules.
§11-13AA-11. Interpretation and construction.
§11-13AA-12. Effective date.
§11-13AA-13. Termination of credit.

§11-13AA-1. Short title.

1 This article may be cited as the "West Virginia
2 Commercial Patent Incentives Tax Act."

§11-13AA-2. Legislative findings and purpose.

1 The Legislature finds that encouraging the development
2 and use of commercial intellectual properties in this state is
3 in the public interest and promotes the general welfare of the
4 people of this state. In order to encourage greater
5 development and use in this state of commercial intellectual
6 properties by West Virginia businesses and thereby increase
7 economic opportunity in this state, there are hereby enacted
8 tax incentives for developing and using patents in this state.

§11-13AA-3. Definitions.

(a) *General.* -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) *Terms defined.* --

(1) "Agreement" means any agreement or contractual relationship entered into after the effective date of this section between a person developing patents in this state and either:

(A) A corporation established under the laws of this state that meet the requirements of section three, article twelve, chapter eighteen-b of this code; or

(B) A center for economic development and technological advancement created pursuant to section three, article twelve-a, chapter eighteen-b of this code.

(2) "Business activity" means all activities engaged in or caused to be engaged in by a person with the object of gain or economic benefit, direct or indirect.

(3) "Commercial use" means selling, licensing, leasing or otherwise making patents available to a third party for a price, fee, royalty, commission or other consideration called by whatever name. "Commercial use" also means, in the case of patents developed by the developer for the developer's own commercial use, the first use of the patents in a manufacturing or other business activity of the developer.

(4) "Commissioner" and "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia or his or her designee.

(5) "Copyright" means a copyright that is registered with the United States Copyright Office or with a similar office of a foreign country when the foreign copyright is recognized under federal law.

(6) "Credit year" means the taxable year in which the person realizes the net profit attributable to a patent. In the case of a license or lease to use patents, "credit year" means each taxable year during the term of the license or lease to use patents.

(7) "Delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the Tax Department of the Department of Revenue duly authorized by the Tax Commissioner directly, or indirectly, by one or more redelegations of authority to perform the functions mentioned or described in this article.

(8) "Developer" means a person engaged in this state in developing patents for direct use in a manufacturing process or product and who has an agreement, as defined in this section, with Marshall University or West Virginia University.

(9) "Directly used in manufacturing process or product" and "direct use in manufacturing process or product" mean the use of patents directly in those activities or operations which constitute an integral and essential part of the manufacturing processes and products, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the manufacturing activity such as those activities that are incidental. Those

activities that are incidental to business activities such as bills, marketing, inventory control, order fulfillment, shipping and tracking are not considered an integral and essential part of the manufacturing process or product.

(10) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three.

(11) "Mask work" means a series of related images, however fixed or encoded:

(A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

(12) "Owner", when used in reference to a pass-through entity, means a person who owns an equity interest in the pass-through entity.

(13) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, which is not a sole proprietorship, trust or estate, and which is treated as a partnership for federal income tax purposes for the taxable year.

(14) "Pass-through entity" means a partnership, limited liability company, small business corporation (S corporation)

or other entity treated as a partnership for federal income tax purposes for the taxable year.

(15) "Patent" means a United States or foreign national patent grant or United States certificate of invention or certificate of protection under the Plant Variety Protection Office of the United States Department of Agriculture and is limited to patents developed in this state for direct use in a manufacturing process or product, or both developed for use and directly used in a manufacturing process or product in this state. For purposes of this article, patents do not include copyrights, trademarks, mask works, trade secrets or any intellectual property that is not a patent.

(16) "Person" includes a natural person, corporation, limited liability company or partnership. A single member liability company that is treated as a disregarded entity for federal income tax purposes is be treated as a disregarded entity for purposes of this article.

(17) "Purchase" means a transaction under which title to an item is transferred for consideration, or a license or lease contract for at least three years is executed, regardless of whether title to the item is transferred at the end of the lease or license period.

(18) "Taxpayer" means any person subject to the tax imposed by article twenty-three or twenty-four of this chapter or to both taxes. In the case of a sole proprietorship that is not subject to either the tax imposed by article twenty-three or twenty-four of this chapter, the term "taxpayer" means a natural person who owns a disregarded entity and who is subject to the tax imposed by article twenty-one of this chapter on his or her income from business activity in this state, or any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter.

(19) "Trademark" means any trademark, trade name, service mark or other identifying symbol or name that is registered with the United States Patent and Trademark Office or with a similar office of a foreign country when the foreign registration is recognized under federal law.

(20) "Trade secret" means information, including a formula, pattern, compilation, program device, method, technique or process, that:

(A) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§11-13AA-4. Tax incentive for developing patents in this state.

(a) *Allowance of credit.* -- A person engaging in this state in developing patents for direct use in a manufacturing process or product and who has an agreement, as defined in section three of this article, with Marshall University or West Virginia University is allowed a credit, when computing the person's liability for business franchise tax imposed by article twenty-three of this chapter and corporation net income tax imposed by article twenty-four of this chapter, in the amount allowed under subsection (b) of this section. When the developer is a sole proprietor or a pass-through entity, that amount of the credit remaining after first applying it against the tax liability under article twenty-three of this chapter for the taxable year is allowed when computing the tax imposed by article twenty-one of this chapter on income from the person's business activity.

(b) *Amount of credit.* -- The amount of credit allowed under this section is equal to twenty percent of the royalties, license fees or other consideration received by the developer during the taxable year from the sale, lease or licensing of a patent developed in this state for direct use in a manufacturing process or product by the person in taxable years beginning on or after January 1, 2011: *Provided,* That the amount of credit allowed under this section is thirty percent, rather than twenty percent, when the person reinvests at least eighty percent of the amount of the credit claimed for the taxable year in depreciable property purchased for purposes of developing additional patents in this state in taxable years beginning on or after January 1, 2011, or improving upon a patent developed in this state or contributing to a stipend to retain a graduate or post-doctoral student in this state integral to the development of the patents or related technology in taxable years beginning on or after January 1, 2011, during the next taxable year of the person, and the person has an agreement, as defined in section three of this article, for the development of a patent.

(c) *Rules for application of credit.* -- The amount of credit computed under this section is allowed in accordance with the following rules and applied as provided in subsection (d) of this section:

(1) No credit is allowed under this section for royalties, rents, license fees or other consideration received by the developer of the patent for a patent developed outside this state, except as provided in subdivision (2) of this subsection;

(2) When the person developed the patent for direct use in a manufacturing process or product through that person's activity in this state and through that person's activity in one or more other states, the consideration received by the developer during the taxable year from the sale, lease or license of the patent developed through multistate activity of

the developer is multiplied by a fraction, the numerator of which is the direct costs of developing the patent in this state and the denominator of which is the total direct costs of developing the patent. The product of this computation establishes the consideration to be used in subsection (b) of this section;

(3) If a person receives a portion of a royalty that would be eligible for a tax credit under this section because of a business association, licensing agreement or otherwise, the person may receive the tax credit allowable to the portion of royalties that person receives;

(4) Unused credit may be carried forward until used for a period of nine consecutive years after the taxable year in which the credit allowed by this section accrues to the person. When the person is an owner of a pass-through entity, credit accrues to the owner when it accrues to the pass-through entity;

(5) No credit is allowed under this section for consideration received by the developer for patents developed for direct use in a manufacturing process or product before the taxable year beginning January 1, 2011. For purposes of this subdivision, a patent was developed for direct use in a manufacturing process or product before January 1, 2011, if before that date it was sold, leased or licensed to a third party prior to January 1, 2011, or before that day it was reduced to practice for purely commercial purposes by the developer or a person related to the developer, as defined in subsection (b), Section 267 of the Internal Revenue Code of 1986, as amended, and as defined in section nine, article twenty-one of this chapter or section three, article twenty-four of this chapter; and

(6) No credit is allowed under this section beginning with the eleventh taxable year after the patent was first directly used in a manufacturing process or product.

(d) *Application of credit.* -- The amount of the credit computed under this section is allowed as a credit against tax as provided in this subsection, but the credit may not reduce the tax below zero.

(1) *Business franchise tax.*-- The amount of the allowable credit shall first be taken as a credit against the tax liability of the developer for the taxable year under article twenty-three of this chapter.

(2) *Corporation net income tax.* -- The amount of the allowable credit remaining, if any, after first applying the credit against the tax imposed by article twenty-three of this chapter shall then be taken as a credit when computing the liability of the developer for the taxable year under article twenty-four of this chapter.

(3) *Personal income tax on business income.* --

(A) When the developer is a sole proprietor, the amount of the allowable credit is taken as a credit when computing the liability of the developer for the taxable year on business income under article twenty-one of this chapter.

(B) When the developer is a pass-through entity, the amount of allowable credit remaining, if any, after first applying the credit against the tax imposed by article twenty-three of this chapter for the taxable year is allowed as a credit against the tax imposed for the taxable year on the West Virginia source income of the pass-through entity under article twenty-one of this chapter and the amount of the credit is distributed to the owners of the pass-through entity in the same manner as items of partnership income, gain loss or deduction are distributed or allocated for the taxable year.

§11-13AA-5. Tax credit for use of a patent in a manufacturing process or product in this state that was developed in this state.

(a) *Allowance of credit.* -- A person directly using a patent developed in this state in a manufacturing process or product in this state is allowed a credit against the person's liability for business franchise tax imposed by article twenty-three of this chapter and corporation net income tax imposed by article twenty-four of this chapter, the amount computed under subsection (b) of this section. When the user of a patent is a sole proprietor or a pass-through entity, that amount of credit allowed against income taxes shall be against the tax imposed by article twenty-one of this chapter.

(b) *Amount of credit.* -- The amount of credit allowed under this section is equal to twenty percent of the net profit attributable to the patent: *Provided,* That the amount of credit allowed under this section is equal to thirty percent of the net profit attributable to the patent when the person claiming the credit reinvests in capital improvements to add product lines to or increase productivity in this state during the next taxable year an amount equal to at least eighty percent of the tax credit amount used for the taxable year.

(c) *Rules for application of credit.* -- The amount of credit computed under this section is allowed in accordance with the following rules and applied as provided in subsection (d) of this section:

(1) The credit allowed by this section is applied after all other credits allowed by this chapter have been applied against the person's business franchise tax and West Virginia income tax liabilities for the taxable year under this chapter;

(2) Unused credit may be carried forward until used for a period of nine consecutive years after the taxable year in

30 which the credit allowed by this section accrues to the
31 person. When the person is an owner of a pass-through
32 entity, credit accrues to the owner when it accrues to the
33 pass-through entity;

34 (3) Any credit not used within the ten-year period
35 described in subdivision (2) of this subsection is forfeited
36 beginning with the eleventh taxable year after the taxable
37 year in which the credit accrued to the person;

38 (4) No credit is allowed under this section for using a
39 patent in this state when the person began using the patent
40 before January 1, 2011;

41 (5) No credit is allowed under this section for using a
42 patent in this state for which the taxpayer is allowed credit
43 under another article of this chapter.

44 (d) *Application of credit.* -- The amount of the credit
45 computed under this section is allowed as a credit against tax
46 as provided in this subsection, but the credit may not reduce
47 the tax below zero.

48 (1) *Business franchise tax.* -- The amount of the allowable
49 credit shall first be taken as a credit against the tax liability of
50 the person allowed the credit for the taxable year under
51 article twenty-three of this chapter.

52 (2) *Corporation net income tax.* -- The amount of the
53 allowable credit remaining, if any, after first applying the
54 credit against the tax imposed by article twenty-three of this
55 chapter shall then be taken as a credit when computing the
56 liability of the corporation for the taxable year under article
57 twenty-four of this chapter.

58 (3) *Personal income tax on business income.* --

59 (A) When the person allowed the credit is a sole
60 proprietor, the amount of the allowable credit is taken as a
61 credit when computing the liability of the person allowed the
62 credit for the taxable year on business income under article
63 twenty-one of this chapter.

64 (B) When the person allowed the credit is a pass-through
65 entity, the amount of allowable credit remaining, if any, after
66 first applying the credit against the tax imposed by article
67 twenty-three of this chapter for the taxable year is allowed as
68 a credit against the tax imposed for the taxable year on the
69 West Virginia source income of the pass-through entity under
70 article twenty-one of this chapter and the amount of the credit
71 is distributed to the owners of the pass-through entity in the
72 same manner as items of partnership income, gain loss or
73 deduction are distributed or allocated for the taxable year.

§11-13AA-6. Transfer of credit to successors.

1 (a) *Mere change in form of business.* -- A patent may not
2 be treated as disposed of by reason of a mere change in the
3 form of conducting the business as long as the patent is
4 retained and directly used in a manufacturing process or
5 product in this state and the person that developed the patent
6 retains a controlling interest in the successor business. In this
7 event, the successor business is allowed to claim the amount
8 of credit still available with respect to the patent transferred
9 to a successor.

10 (b) *Transfer or sale to successor.* -- A patent may not be
11 treated as disposed of under this article by reason of any
12 transfer or sale to a successor business which continues to
13 directly use the patent in a manufacturing process or product
14 in this state. Upon transfer or sale, the successor acquires the
15 amount of credit or deduction that remains available under
16 this article for each subsequent taxable year.

§11-13AA-7. Identification of a patent and required records.

(a) *Required records.* -- Every developer of a patent in this state for direct use in a manufacturing process or product and every person who uses a patent directly in a manufacturing process or product in this state who claims a credit under this article shall maintain sufficient records to establish the following facts for each item of a patent for which a credit is allowed under this article:

(1) Its identity;

(2) The amount of net profit attributable to the patent;

(3) The month and taxable year in which the patent was first used, placed in service or directly used in the person's manufacturing process or product in this state;

(4) The amount of credit taken; and

(5) The date the patent was disposed of or otherwise ceased to be directly used in the person's manufacturing process or product in this state.

(b) *Enhanced deduction of credit.* -- Any person who claims the enhanced credit under section four or five of this article shall maintain sufficient records to clearly establish entitlement to claim the amount of the enhanced credit. At a minimum those records shall identify:

(1) Each and every item of depreciable property purchased for purposes of claiming the enhanced credit;

(2) The date the depreciable property identified in subdivision (1) of this subsection was purchased, its cost and its estimated useful life determined using strait-line method of depreciation;

(3) The date the depreciable property identified in subdivision (1) of this subsection was placed in service or used in the person's business activity in this state;

(4) The date the depreciable property identified in subdivision (1) of this subsection was taken out of service or use in the person's business activity in this state and the reason why the property was taken out of service or use; and

(5) Other information that the Tax Commissioner may reasonably require by rule promulgated as provided in section eleven of this article.

(c) *New jobs*. -- Every person who claims a credit under this article shall also maintain sufficient records to establish the number and types of new jobs, if any created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

(d) *Exception*. -- This section does not apply to an owner of a pass-through entity that develops or uses a patent for which a credit is allowed under this article.

§11-13AA-8. Failure to keep records of a patent for which credit allowed.

A person who does not keep the records required for identification of a patent for which a credit would be allowable under this article is subject to the following rules:

(1) A person is treated as having disposed of, during the taxable year, any patent for which a credit was allowed under this article which the taxpayer cannot establish is still being directly used in the person's manufacturing process or product in this state at the end of that year.

9 (2) If a person cannot establish when a patent was placed
10 in service in direct use in the person's manufacturing process
11 or product in this state, no credit is allowed under this article.

§11-13AA-9. Tax credit review and accountability.

1 (a) Beginning on February 1, 2013, and continuing
2 annually on February 1, the Tax Commissioner shall submit
3 to the Governor, the President of the Senate and the Speaker
4 of the House of Delegates a tax credit review and
5 accountability report evaluating the cost effectiveness of the
6 credits allowed under this article during the most recent year
7 for which information is available. The criteria to be
8 evaluated include, but are not limited to, for each year:

9 (1) The number of taxpayers claiming the credit;

10 (2) The net number, type and duration of new jobs
11 created by all taxpayers claiming the credit and the wages
12 and benefits paid;

13 (3) The cost of the credit;

14 (4) The cost of the credit per new job created; and

15 (5) A comparison of employment trends for the industry
16 and for taxpayers within the industry that claim the credit or
17 deduction; and

18 (b) Taxpayers claiming the credit shall provide
19 information that the Tax Commissioner requires to prepare
20 the report required by this section. The information is subject
21 to the confidentiality and disclosure provisions of sections
22 five-d and five-s, article ten of this chapter.

§11-13AA-10. Promulgation of rules.

The Tax Commissioner shall adopt procedural and interpretive rules or propose legislative rules for legislative approval, as appropriate, in the manner prescribed in article three, chapter twenty-nine-a of this code, that the Tax Commissioner considers necessary to administer this article.

§11-13AA-11. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in section two of this article.

§11-13AA-12. Effective date.

The provisions of this article become effective on July 1, 2011, and apply only to a patent developed in this state after the taxable years beginning on or after January 1, 2011, and to a patent purchased, leased or licensed for use after that date for direct use in the taxpayer's manufacturing process or product in this state.

§11-13AA-13. Termination of credit.

The Tax Commissioner may not allow any credit for a patent developed or purchased leased or licensed after December 31, 2016, unless this credit is sooner terminated or continued by the Legislature. Termination of the credit allowed by this article, as provided in this section, does not adversely affect the ability of a taxpayer to claim the benefit of any credit accruing under this article prior to January 1, 2016.

CHAPTER 190

(Com. Sub. for S. B. 345 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13B-19, relating to requiring a study of the telecommunications tax; authorizing the Tax Commissioner to order the disclosure of certain information; exempting certain information received by the Tax Commissioner from the West Virginia Freedom of Information Act; prohibiting the disclosure of certain information received by the Tax Commissioner; providing for criminal and civil penalties; defining terms; and authorizing the Tax Commissioner to promulgate rules 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 section, designated §11-13B-19, to read as follows:

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-19. Tax Commissioner study of telecommunications tax.

1 (a) *Findings and purpose.* -- The Legislature finds that
2 the tax imposed by this article fails to account for modern
3 business models, operational structures, technologies and
4 fundamental economics of the business of
5 telecommunications. The Legislature further finds that the
6 tax imposed under this article should be amended to provide
7 for a reasonable, fair and efficient tax that inures to the
8 benefit and general welfare of West Virginia. Therefore, it
9 is the purpose of this section to require a study of
10 telecommunications services relative to the imposition of a
11 telecommunications tax, to provide the Tax Commissioner
12 with plenary authority to order the disclosure of financial
13 information and other data necessary to undertake the study
14 and to provide for the confidentiality of financial information
15 and other data disclosed as part of the study.

16 (b) *Telecommunications tax study.* -- The Tax
17 Commissioner shall study the business of
18 telecommunications service and related businesses and shall
19 file a report with the Governor and the Legislature on or
20 before July 1, 2011. The report shall recommend
21 amendments to the tax imposed under this article or any other
22 tax pertaining to telecommunications service and shall
23 include recommended legislation. The Tax Commissioner in
24 his report shall examine the feasibility and fiscal implications
25 on affected governmental entities or political subdivisions of
26 a single uniform statewide telecommunications service tax or,
27 alternatively, imposition of the sales and use tax on the retail
28 sale of telecommunications services as a replacement for, or
29 in addition to, other taxes and fees on telecommunications
30 service. The Tax Commissioner may include this study as
31 part of the findings and recommendations of the Governor's
32 Tax Modernization Project and may cooperate with persons
33 engaged in the Governor's Tax Modernization Project to
34 further the purposes of this study. Any consultant under

contract with the Tax Commissioner who assists in conducting this study is "an agent of this state" for the purposes of section five-d, article ten of this chapter and is subject to the requirements of that section and subsection (e) of this section: *Provided,* That witnesses, experts, government officials, consultants and industry representatives who provide data, information or statistics to the Tax Commissioner or others engaged in the study mandated by this section shall not be treated as being subject to the confidentiality restrictions of section five-d, article ten of this chapter and shall not be treated as subject to the confidentiality requirements of subsection (e) of this section, solely by reason of having provided information to the study. For purposes of this study, the Tax Commissioner may seek and examine the information, data, records and testimony of: Experts in the fields of law, economics and taxation; representatives of state, county, local and municipal governmental subdivisions of this state and other states of the United States; persons and entities engaged in telecommunications services businesses; persons knowledgeable about the telecommunications industry, taxation of the telecommunications industry and the economics of the telecommunications industry; and any other person or entity that may have information relevant to the study mandated by this section.

(c) *Definitions.* -- As used in this section:

(1) "Person" means any individual, firm, partnership, limited partnership, company, copartnership, joint venture, association, corporation, organization or entity, whether private or public.

(2) "Telecommunications service" when used in this article shall have the same meaning as that term is defined in the Streamlined Sales and Use Tax Administration Act in article fifteen-b of this chapter.

69 (d) *Disclosure of financial information and other data.* --

70 (1) Notwithstanding any provision of this code to the
71 contrary, the Tax Commissioner may, for the purpose of
72 conducting the study required by this section, order the
73 disclosure of financial information and other data in the
74 possession of any person or entity that may have information
75 relevant to the study mandated by this section, including, but
76 not limited to, government entities and persons or entities
77 engaged in a telecommunications service business in this
78 state or a related business. The disclosures shall be on forms
79 prescribed by the Tax Commissioner and shall be completed
80 and filed pursuant to instructions provided by the Tax
81 Commissioner.

82 (2) Any person failing to comply with an order of
83 disclosure within ninety days of receipt of the initial written
84 order of disclosure, which order may be in the form of a letter
85 or other written order, or in the form of a subpoena or
86 subpoena duces tecum, shall be subject to a penalty,
87 collectible as provided in article ten of this chapter. The
88 amount of the penalties shall be an initial penalty of $25,000
89 which shall be imposed upon the passage of the first ninety
90 days subsequent to receipt of such written order of disclosure
91 during which the failure to comply occurs and an additional
92 penalty of $1,000 per day for each day after the first ninety
93 days during which the failure to comply continues. The
94 count of days for purposes of this penalty shall not cease by
95 reason of the completion of the study or by reason of the
96 completion and issuance of the study report, but shall
97 continue in perpetuity until such time as the information
98 which was the subject of the order is disclosed in full to the
99 Tax Commissioner or until the Tax Commissioner issues a
100 written order for cessation of the count of Days. The Tax
101 Commissioner may issue a written order for cessation of the
102 count of days, for purposes of this penalty, no earlier than the
103 date on which the study report mandated by this section has

been completed and issued by the Tax Commissioner. In the case of information which has been the subject of a subpoena or subpoena duces tecum, the $25,000 initial penalty and the $1,000 per day penalty imposed by this section shall be in addition to all applicable civil and criminal penalties lawfully imposed for failure to comply with a subpoena or subpoena duces tecum. The Tax Commissioner may waive all or any part of such penalty for good cause shown.

(3) The Tax Commissioner, or his or her designee, may issue subpoenas and subpoenas duces tecum, in the manner prescribed in and subject to the requirements of section five-b, article ten of this chapter, to enforce the disclosure requirements of this section. Failure to comply with any such subpoena or subpoena duces tecum shall be subject to all applicable civil and criminal penalties lawfully imposed for failure to comply with a subpoena or subpoena duces tecum.

(e) *Confidentiality.* --

(1) Financial information and other data disclosed to the Tax Commissioner under the provisions of this section shall be considered confidential and exempt from article one, chapter twenty-nine-b of this code.

(2) Any information disclosed to the Tax Commissioner pursuant to the requirements of this section shall have all of the confidentiality protections given to a "return" under section five-d of article ten of this Chapter and any disclosure not authorized by that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure of a "return". Notwithstanding any provision of this code to the contrary, the Tax Commissioner may share financial information and other data disclosed under this section with any consultant under contract with the Tax Commissioner to assist in conducting the study. It is unlawful for the Tax Commissioner or any person conducting the study, including

137 any consultant under contract with the Tax Commissioner to
138 assist in conducting the study, to disclose to any person not
139 conducting the study any financial information or other data
140 disclosed under this section. Such disclosure shall be a
141 violation of the tax information confidentiality provisions of
142 section five-d, article ten of this chapter.

143 (3) Nothing in this section may be construed as
144 prohibiting the publication or release of statistics so classified
145 as to prevent the identification of a particular person or
146 entity.

147 (f) *Rules authorized.* -- The Tax Commissioner may
148 promulgate rules, including emergency rules, to implement
149 the provisions of this section. For the purposes of article
150 three, chapter twenty-nine-a of this code, a sufficient
151 emergency exists to justify the promulgation of the
152 emergency rules.

CHAPTER 191

(S. B. 461 - By Senators Helmick, McCabe and Minard)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-11, §11-15B-17, §11-15B-25, §11-15B-26 and §11-15B-32 of the Code of West Virginia, 1931, as amended, all relating to the administration of sales and use tax generally; striking certain definitions; incorporating changes made by the governing board in reference to the agreement; adding a classification for

registration of seller making no sales in state; defining "advertising and promotional direct mail" and "other direct mail"; providing duties of purchasers and sellers of direct mail; directing the tax commissioner to provide notice and simplified electronic returns; allowing for electronic payment of taxes due; identifying required filers; providing for the loss of exemption for failing to file; adopting a standardized transmission process; authorizing the tax commissioner to establish liability amount of taxes; and providing new effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2, §11-15B-2a, §11-15B-11, §11-15B-17, §11-15B-25, §11-15B-26 and §11-15B-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.

§11-15B-2. Definitions.
§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.
§11-15B-11. Seller registration.
§11-15B-17. Direct mail sourcing.
§11-15B-25. Uniform tax returns.
§11-15B-26. Uniform rules for remittance of funds.
§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 where a different
5 meaning is distinctly expressed or the context in which the
6 term is used clearly indicates that a different meaning is
7 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
40 a price that is separately identified by product on binding
41 sales 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

of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis;

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the "purchase price" or "sales price" of the products taxable at the general sales tax rate is de minimis. For purposes of this subparagraph, the term "de minimis" has the same meaning as ascribed to it under subparagraph (iii) of this paragraph;

(v) The "retail sale" of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility-enhancing equipment", "over-the-counter drugs", "prosthetic devices" or medical supplies, all as defined in this article; and

(II) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent determination for a transaction.

(5) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Candy" shall not include any

preparation containing flour and shall require no refrigeration.

(6) "Clothing" means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

(A) "Clothing" shall include:

(i) Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

(x) Diapers, children and adult, including disposable diapers;

(xi) Ear muffs;

(xii) Footlets;

(xiii) Formal wear;

(xiv) Garters and garter belts;

(xv) Girdles;

(xvi) Gloves and mittens for general use;

(xvii) Hats and caps;

(xviii) Hosiery;

(xix) Insoles for shoes;

(xx) Lab coats;

(xxi) Neckties;

(xxii) Overshoes;

(xxiii) Pantyhose;

(xxiv) Rainwear;

(xxv) Rubber pants;

(xxvi) Sandals;

(xxvii) Scarves;

(xxviii) Shoes and shoe laces;

(xxix) Slippers;

(xxx) Sneakers;

(xxxi) Socks and stockings;

(xxxii) Steel-toed shoes;

(xxxiii) Underwear;

140 (xxxiv) Uniforms, athletic and nonathletic; and

141 (xxxv) Wedding apparel.

142 (B) "Clothing" shall not include:

143 (I) Belt buckles sold separately;

144 (ii) Costume masks sold separately;

145 (iii) Patches and emblems sold separately;

146 (iv) Sewing equipment and supplies, including, but not
147 limited to, knitting needles, patterns, pins, scissors, sewing
148 machines, sewing needles, tape measures and thimbles; and

149 (v) Sewing materials that become part of "clothing"
150 including, but not limited to, buttons, fabric, lace, thread,
151 yarn and zippers.

152 (7) "Clothing accessories or equipment" means incidental
153 items worn on the person or in conjunction with "clothing".
154 "Clothing accessories or equipment" are mutually exclusive
155 of and may be taxed differently than apparel within the
156 definition of "clothing", "sport or recreational equipment"
157 and "protective equipment". The following list contains
158 examples and is not intended to be an all-inclusive list.
159 "Clothing accessories or equipment" shall include:

160 (A) Briefcases;

161 (B) Cosmetics;

162 (C) Hair notions, including, but not limited to, barrettes,
163 hair bows and hair nets;

164 (D) Handbags;

(E) Handkerchiefs;

(F) Jewelry;

(G) Sunglasses, nonprescription;

(H) Umbrellas;

(I) Wallets;

(J) Watches; and

(K) Wigs and hair pieces.

(8) "Certified automated system" or "CAS" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(9) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales and use tax functions other than the seller's obligation to remit tax on its own purchases.

(10) "Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(11) "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

(12) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property

or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(13) "Dietary supplement" means any product, other than "tobacco", intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;

(B) And is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR §101.36 or in any successor section of the Code of Federal Regulations.

(14) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to

216 a mass audience or to addressees on a mailing list provided
217 by the purchaser or at the direction of the purchaser when the
218 cost of the items are not billed directly to the recipients.
219 "Direct mail" includes tangible personal property supplied
220 directly or indirectly by the purchaser to the direct mail seller
221 for inclusion in the package containing the printed material.
222 "Direct mail" does not include multiple items of printed
223 material delivered to a single address.

224 (15) "Drug" means a compound, substance or
225 preparation, and any component of a compound, substance or
226 preparation, other than food and food ingredients, dietary
227 supplements or alcoholic beverages:

228 (A) Recognized in the official United States
229 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
230 United States or official National Formulary, and supplement
231 to any of them;

232 (B) Intended for use in the diagnosis, cure, mitigation,
233 treatment or prevention of disease; or

234 (C) Intended to affect the structure or any function of the
235 body. The amendment to this subdivision enacted during the
236 2009 regular legislative session shall apply to sales made
237 after July 1, 2009.

238 (16) "Durable medical equipment" means equipment,
239 including repair and replacement parts for the equipment, but
240 does not include "mobility-enhancing equipment", which:

241 (A) Can withstand repeated use;

242 (B) Is primarily and customarily used to serve a medical
243 purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(17) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(18) "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in this state.

(19) "Energy Star qualified product" means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

(20) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(21) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, prepared food or tobacco.

(22) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(23) "Fur clothing" means "clothing" that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U.S.C. §69) and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. "Fur clothing" is human-wearing apparel suitable for general use but may be taxed differently from "clothing". For the purposes of the definition of "fur clothing", the term "fur" means any animal skin or part thereof with hair, fleece or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing the hair, fleece or fur fiber has been completely removed.

(24) "Governing board" means the governing board of the Streamlined Sales and Use Tax Agreement.

(25) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter drugs".

(26) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(27) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

305 (28) "Lease" includes rental, hire and license. "Lease"
306 means any transfer of possession or control of tangible
307 personal property for a fixed or indeterminate term for
308 consideration. A lease or rental may include future options
309 to purchase or extend.

310 (A) "Lease" does not include:

311 (i) A transfer of possession or control of property under
312 a security agreement or deferred payment plan that requires
313 the transfer of title upon completion of the required
314 payments;

315 (ii) A transfer or possession or control of property under
316 an agreement that requires the transfer of title upon
317 completion of required payments and payment of an option
318 price does not exceed the greater of $100 or one percent of
319 the total required payments; or

320 (iii) Providing tangible personal property along with an
321 operator for a fixed or indeterminate period of time. A
322 condition of this exclusion is that the operator is necessary
323 for the equipment to perform as designed. For the purpose of
324 this subparagraph, an operator must do more than maintain,
325 inspect or set-up the tangible personal property.

326 (iv) "Lease" or "rental" includes agreements covering
327 motor vehicles and trailers where the amount of consideration
328 may be increased or decreased by reference to the amount
329 realized upon sale or disposition of the property as defined in
330 26 U.S.C. 7701(h)(1).

331 (B) This definition shall be used for sales and use tax
332 purposes regardless if a transaction is characterized as a lease
333 or rental under generally accepted accounting principles, the
334 Internal Revenue Code, the Uniform Commercial Code or
335 other provisions of federal, state or local law.

336 (29) "Load and leave" means delivery to the purchaser by
337 use of a tangible storage media where the tangible storage
338 media is not physically transferred to the purchaser.

339 (30) "Mobility-enhancing equipment" means equipment,
340 including repair and replacement parts to the equipment, but
341 does not include "durable medical equipment", which:

342 (A) Is primarily and customarily used to provide or
343 increase the ability to move from one place to another and
344 which is appropriate for use either in a home or a motor
345 vehicle;

346 (B) Is not generally used by persons with normal
347 mobility; and

348 (C) Does not include any motor vehicle or equipment on
349 a motor vehicle normally provided by a motor vehicle
350 manufacturer.

351 (31) "Model I seller" means a seller that has selected a
352 certified service provider as its agent to perform all the
353 seller's sales and use tax functions, other than the seller's
354 obligation to remit tax on its own purchases.

355 (32) "Model II seller" means a seller that has selected a
356 certified automated system to perform part of its sales and
357 use tax functions, but retains responsibility for remitting the
358 tax.

359 (33) "Model III seller" means a seller that has sales in at
360 least five member states, has total annual sales revenue of at
361 least $500 million, has a proprietary system that calculates
362 the amount of tax due each jurisdiction and has entered into
363 a performance agreement with the member states that
364 establishes a tax performance standard for the seller. As used

365 in this definition, a seller includes an affiliated group of
366 sellers using the same proprietary system.

367 (34) "Over-the-counter drug" means a drug that contains
368 a label that identifies the product as a drug as required by
369 21 CFR §201.66. The "over-the-counter drug" label
370 includes:

371 (A) A "drug facts" panel; or

372 (B) A statement of the "active ingredient(s)" with a list of
373 those ingredients contained in the compound, substance or
374 preparation.

375 (35) "Person" means an individual, trust, estate,
376 fiduciary, partnership, limited liability company, limited
377 liability partnership, corporation or any other legal entity.

378 (36) "Personal service" includes those:

379 (A) Compensated by the payment of wages in the
380 ordinary course of employment; and

381 (B) Rendered to the person of an individual without, at
382 the same time, selling tangible personal property, such as
383 nursing, barbering, manicuring and similar services.

384 (37) (A) "Prepared food" means:

385 (i) Food sold in a heated state or heated by the seller;

386 (ii) Two or more food ingredients mixed or combined by
387 the seller for sale as a single item; or

388 (iii) Food sold with eating utensils provided by the seller,
389 including plates, knives, forks, spoons, glasses, cups, napkins

390 or straws. A plate does not include a container or packaging
391 used to transport the food.

392 (B) "Prepared food" in subparagraph (ii), paragraph (A)
393 of this subdivision does not include food that is only cut,
394 repackaged or pasteurized by the seller, and eggs, fish, meat,
395 poultry and foods containing these raw animal foods
396 requiring cooking by the consumer as recommended by the
397 Food and Drug Administration in Chapter 3, Part 401.11 of
398 its Food Code of 2001 so as to prevent food-borne illnesses.

399 (C) Additionally, "prepared food" as defined in this
400 subdivision does not include:

401 (i) Food sold by a seller whose proper primary NAICS
402 classification is manufacturing in Sector 311, except
403 Subsection 3118 (bakeries);

404 (ii) Food sold in an unheated state by weight or volume
405 as a single item; or

406 (iii) Bakery items, including bread, rolls, buns, biscuits,
407 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
408 tarts, muffins, bars, cookies, tortillas.

409 (38) "Prescription" means an order, formula or recipe
410 issued in any form of oral, written, electronic or other means
411 of transmission by a duly licensed practitioner authorized by
412 the laws of this state to issue prescriptions.

413 (39) "Prewritten computer software" means "computer
414 software", including prewritten upgrades, which is not
415 designed and developed by the author or other creator to the
416 specifications of a specific purchaser.

417 (A) The combining of two or more prewritten computer
418 software programs or prewritten portions thereof does not

cause the combination to be other than prewritten computer software.

(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(40) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(41) "Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

449 (C) Support a weak or deformed portion of the body.

450 (42) "Protective equipment" means items for human wear
451 and designed as protection of the wearer against injury or
452 disease or as protections against damage or injury of other
453 persons or property but not suitable for general use.

454 (43) "Purchase price" means the measure subject to the
455 tax imposed by article fifteen or fifteen-a of this chapter and
456 has the same meaning as sales price.

457 (44) "Purchaser" means a person to whom a sale of
458 personal property is made or to whom a service is furnished.

459 (45) "Retail sale" or "sale at retail" means:

460 (A) Any sale, lease or rental for any purpose other than
461 for resale as tangible personal property, sublease or subrent;
462 and

463 (B) Any sale of a service other than a service purchased
464 for resale.

465 (46) (A) "Sales price" means the measure subject to the
466 tax levied under article fifteen or fifteen-a of this chapter and
467 includes the total amount of consideration, including cash,
468 credit, property and services, for which personal property or
469 services are sold, leased or rented, valued in money, whether
470 received in money or otherwise, without any deduction for
471 the following:

472 (i) The seller's cost of the property sold;

473 (ii) The cost of materials used, labor or service cost,
474 interest, losses, all costs of transportation to the seller, all
475 taxes imposed on the seller and any other expense of the
476 seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

(B) "Sales price" does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(47) "Sales tax" means the tax levied under article fifteen of this chapter.

(48) "School art supply" means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply", "school instructional material" and "school computer supply" and may be taxed differently. The following is an all-inclusive list:

(A) Clay and glazes;

(B) Paints; acrylic, tempora and oil;

(C) Paintbrushes for artwork;

(D) Sketch and drawing pads; and

(E) Watercolors.

(49) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply", "school art supply" and "school computer supply" and may be taxed differently. The following is an all-inclusive list:

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks.

(50) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms "school supply", "school art supply" and "school instructional material" and may be taxed differently. The following is an all-inclusive list:

(A) Computer storage media; diskettes, compact disks;

(B) Handheld electronic schedulers, except devices that are cellular phones;

(C) Personal digital assistants, except devices that are cellular phones;

(D) Computer printers; and

(E) Printer supplies for computers; printer paper, printer ink.

(51) "School supply" means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply", "school instructional material" and "school computer supply" and may be taxed differently. The following is an all-inclusive list of school supplies:

(A) Binders;

(B) Book bags;

(C) Calculators;

(D) Cellophane tape;

(E) Blackboard chalk;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders; expandable, pocket, plastic and manila;

(K) Glue, paste and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets.

(52) "Seller" means any person making sales, leases or rentals of personal property or services.

(53) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that is subject to the control of the Public Service Commission

when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(54) "Soft drink" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent of vegetable or fruit juice by volume.

(55) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or recreational equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing", "clothing accessories or equipment" and "protective equipment". The following list contains examples and is not intended to be an all-inclusive list. "Sport or recreational equipment" shall include:

(A) Ballet and tap shoes;

(B) Cleated or spiked athletic shoes;

(C) Gloves, including, but not limited to, baseball, bowling, boxing, hockey and golf;

(D) Goggles;

(E) Hand and elbow guards;

(F) Life preservers and vests;

(G) Mouth guards;

(H) Roller and ice skates;

(I) Shin guards;

(J) Shoulder pads;

(K) Ski boots;

(L) Waders; and

(M) Wetsuits and fins.

(56) "State" means any state of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(57) "Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(58) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

(59) "Tax Commissioner" means the State Tax Commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the

State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(60) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax penalties imposed by article ten of this chapter.

(61)"Telecommunications service" or "telecommunication service" when used in this article and articles fifteen and fifteen-a of this chapter shall have the same meaning as that term is defined in section two-b of this article.

(62) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(63) "Use tax" means the tax levied under article fifteen-a of this chapter.

(64) "Use-based exemption" means an exemption based on a specified use of the product or service by the purchaser.

(65) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.

(c) *Additional definitions.* -- Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may define terms primarily used in the section in which the term 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
4 November 12, 2002, by states that enacted authority to
5 engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which
7 the term is used clearly indicates that a different meaning is
8 intended by the Legislature. "Agreement" includes
9 amendments to the agreement adopted by the implementing
10 states in calendar years 2003, 2004, 2005, 2006, 2007, 2008,
11 2009 and amendments adopted by the governing board on or
12 before, January 31, 2010, but does not include any
13 substantive changes in the agreement adopted after January
14 31, 2010.

§11-15B-11. Seller registration.

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 of seller making no sales.* -- A Model II
11 or Model III seller may elect to register as a seller that
12 anticipates making no sales if the seller had no sales in West
13 Virginia for the preceding twelve months. Such election does
14 not relieve the seller of its agreement pursuant to subsection
15 (a) of section twelve of this article to collect taxes on all sales
16 into this state as well as for all other states participating in the

agreement or its liability for remitting to the proper states any taxes collected.

(c) A written signature from the seller is not required.

(d) *Registration by agent.* -- A person appointed by a seller to represent the seller before the states that are members of the agreement may register the seller under the agreement under uniform procedures approved by the governing board. The appointment of an agent shall be in writing and submitted to this state if requested by the Tax Commissioner.

(e) *Cancellation of registration.* -- A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the state any taxes collected.

(f) Nothing in this section shall be construed to relieve a seller of any legal obligation it may have to register or any obligation to collect and remit taxes for at least thirty-six months and meet all other requirements for amnesty set out in section thirteen of this article in order to be eligible for amnesty.

(g) Sellers shall be registered as follows:

(1) Model I sellers will be automatically registered.

(2) Model II and Model III sellers will be automatically registered but may elect to be registered as a seller which anticipates making no sales in the state.

(h) The provisions of subsections (b) and (g) of this section shall become effective on January 1, 2010, and are retroactive to that date.

§11-15B-17. Direct mail sourcing.

1 (a) Notwithstanding section fifteen of this article, the
2 following provisions apply to sales of "advertising and
3 promotional direct mail:"

4 (1) A purchaser of "advertising and promotional direct
5 mail" may provide the seller with either:

6 (A) A direct pay permit;

7 (B) An agreement certificate of exemption claiming
8 "direct mail" (or other written statement approved, authorized
9 or accepted by the state); or

10 (C) Information showing the jurisdictions to which the
11 "advertising and promotional direct mail" is to be delivered
12 to recipients.

13 (2) If the purchaser provides the permit, certificate or
14 statement referred to in paragraph (A) or (B) of subdivision
15 (1) of this subsection, the seller, in the absence of bad faith,
16 is relieved of all obligations to collect, pay, or remit any tax
17 on any transaction involving "advertising and promotional
18 direct mail" to which the permit, certificate or statement
19 applies. The purchaser shall source the sale to the
20 jurisdictions to which the "advertising and promotional direct
21 mail" is to be delivered to the recipients and shall report and
22 pay any applicable tax due.

23 (3) If the purchaser provides the seller information
24 showing the jurisdictions to which the "advertising and
25 promotional direct mail" is to be delivered to recipients, the
26 seller shall source the sale to the jurisdictions to which the
27 "advertising and promotional direct mail" is to be delivered
28 and shall collect and remit the applicable tax. In the absence
29 of bad faith, the seller is relieved of any further obligation to

collect any additional tax on the sale of "advertising and promotional direct mail" where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) If the purchaser does not provide the seller with any of the items listed in paragraphs (A), (B) or (C) of subdivision (1) of this subsection, the sale shall be sourced according to subdivision (5) of subsection (a) of section fifteen of this article.

(b) Notwithstanding section fifteen of this article, the following provisions apply to sales of "other direct mail."

(1) Except as otherwise provided in this subdivision, sales of "other direct mail" are sourced in accordance with subdivision (3) of subsection (a) of section fifteen of this article.

(2) A purchaser of "other direct mail" may provide the seller with either:

(A) A direct pay permit; or

(B) An Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by this state).

(3) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving "other direct mail" to which the permit, certificate or statement apply. Notwithstanding subdivision (1) subsection (b) of this section, the sale shall be sourced to the jurisdictions to which the "other direct mail"

is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

(c) For purposes of this section:

(1) "Advertising and promotional direct mail" means:

(A) Printed material that meets the definition of "direct mail," as defined in subdivision (15), subsection (b), section two of this article;

(B) The primary purpose of which is to attract public attention to a product, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically or a service.

(2) "Other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

88 Other direct mail does not include the development of
89 billing information or the provision of any data processing
90 service that is more than incidental.

91 (d) This section applies to a transaction characterized
92 under state law as the sale of services only if the service is an
93 integral part of the production and distribution of printed
94 material that meets the definition of "direct mail."

95 (e) This section does not apply to any transaction that
96 includes the development of billing information or the
97 provision of any data processing service that is more than
98 incidental regardless of whether "advertising and promotional
99 direct mail" is included in the same mailing.

100 (1) If a transaction is a "bundled transaction" that
101 includes "advertising and promotional direct mail," this
102 section applies only if the primary purpose of the transaction
103 is the sale of products or services that meet the definition of
104 "advertising and promotional direct mail."

105 (2) Nothing in this section shall limit any purchaser's:

106 (A) Obligation for sales or use tax to any state to which
107 the direct mail is delivered,

108 (B) Right under local, state, federal or Constitutional law,
109 to a credit for sales or use taxes legally due and paid to other
110 jurisdictions, or

111 (C) Right to a refund of sales or use taxes overpaid to any
112 jurisdiction.

113 (f) This section applies for purposes of uniformly
114 sourcing "direct mail" transactions and does not impose
115 requirements on states regarding the taxation of products that

116 meet the definition of "direct mail" or to the application of
117 sales for resale or other exemptions.

§11-15B-25. Uniform tax returns.

1 (a) *General.* -- A seller who registers with this state is
2 required to file a single sales and 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 make available to all sellers, except
9 sellers of products qualifying for exclusion from the
10 provisions of the agreement, a simplified return that is filed
11 electronically.

12 (d) The Tax Commissioner may not require a seller
13 which has indicated at the time of registration that it
14 anticipates making no sales which would be sourced to this
15 state to file a return, except that the seller shall lose the
16 exemption upon making any taxable sales into this state and
17 shall file a return in the month following any sale.

18 (e) After January 1, 2010, the Tax Commissioner shall
19 give notice to a seller, which has no legal requirement to
20 register in this state, of a failure to file a required return and
21 a minimum of thirty days to file thereafter prior to
22 establishing a liability amount for taxes based solely on the
23 seller's failure to timely file a return: *Provided,* That the Tax
24 Commissioner may establish a liability amount of taxes based
25 solely on the seller's failure to timely file a return if such
26 seller has a history of nonfiling or late filing.

(f) Nothing in this section shall prohibit the Tax Commissioner from allowing additional return options or the filing of returns less frequently.

§11-15B-26. Uniform rules for remittances of funds.

(a) *General.* -- Only one remittance is required for each return except as provided in this section.

(b) *When electronic remittance required.* --

(1) All remittances from sellers under Models I, II and III shall be remitted electronically after December 31, 2003.

(2) All remittances in payment of taxes reported on the approved simplified return format shall be remitted electronically.

(c) *Method of remittance.* -- Electronic payments shall be made using either the ACH credit or ACH debit method.

(d) *Alternative method.* -- The Tax Commissioner shall provide by rule, which may be an existing rule, an alternative method for making "same day" payments if an electronic funds transfer fails.

(e) *Format of data accompanying remittance.* -- Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year 2003, shall

take effect January 1, 2004, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by act of the Legislature in the year 2004 shall apply to all sales made on or after the date of passage in the year 2004.

(d) The provisions of this article, as amended or added during the regular legislative session in the year 2008, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(e) The provisions of this article, as amended or added during the 2009 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(f) The provisions of this article, as amended or added during the 2010 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

CHAPTER 192

(S. B. 216 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 9, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the 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:

PART I. GENERAL.

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

7 provisions of the laws of the United States that relate to the
8 determination of income for federal income tax purposes.
9 All amendments made to the laws of the United States after
10 December 31, 2008, but prior to January 1, 2010, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after January 1, 2010, shall be given any
16 effect.

17 (b) *Medical savings accounts*. -- The term "taxable trust"
18 does not include a medical savings account established
19 pursuant to section twenty, article fifteen, chapter thirty-three
20 of this code or section fifteen, article sixteen of said chapter.
21 Employer contributions to a medical savings account
22 established pursuant to said sections are not "wages" for
23 purposes of withholding under section seventy-one of this
24 article.

25 (c) *Surtax*. -- The term "surtax" means the twenty percent
26 additional tax imposed on taxable withdrawals from a
27 medical savings account under section twenty, article fifteen,
28 chapter thirty-three of this code and the twenty percent
29 additional tax imposed on taxable withdrawals from a
30 medical savings account under section fifteen, article sixteen
31 of said chapter which are collected by the Tax Commissioner
32 as tax collected under this article.

33 (d) *Effective date*. -- The amendments to this section
34 enacted in the year 2010 are retroactive to the extent
35 allowable under federal income tax law. With respect to
36 taxable years that began prior to January 1, 2011, the law in
37 effect for each of those years shall be fully preserved as to
38 that year, except as provided in this section.

39 (e) For purposes of the refundable credit allowed to a low
40 income senior citizen for property tax paid on his or her

homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

CHAPTER 193

(S. B. 214 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed March 9, 2010; in effect from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the 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.

(a) Any term used in this article has the same meaning as 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 December 31,
11 2008, but prior to January 1, 2010, shall be given effect in
12 determining the taxes imposed by this article to the same
13 extent those changes are allowed for federal income tax
14 purposes, whether the changes are retroactive or prospective,
15 but no amendment to the laws of the United States made on
16 or after January 1, 2010, shall be given any effect.

17 (b) The term "Internal Revenue Code of 1986" means the
18 Internal Revenue Code of the United States enacted by the
19 federal Tax Reform Act of 1986 and includes the provisions
20 of law formerly known as the Internal Revenue Code of
21 1954, as amended, and in effect when the federal Tax Reform
22 Act of 1986 was enacted that were not amended or repealed
23 by the federal Tax Reform Act of 1986. Except when
24 inappropriate, any reference in any law, executive order or
25 other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* -- The amendments to this section
32 enacted in the year 2010 are retroactive to the extent
33 allowable under federal income tax law. With respect to
34 taxable years that began prior to January 1, 2011, the law in
35 effect for each of those years shall be fully preserved as to
36 that year, except as provided in this section.

CHAPTER 194

(Com. Sub. for S. B. 232 - By Senators Snyder, Browning, Foster, Laird, Minard, Oliverio, Kessler, Palumbo, Barnes, Deem, Unger, Stollings, McCabe, Plymale and Wells)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11A-3-5a and §11A-3-5b; and to amend and reenact §11A-3-6, §11A-3-8, §11A-3-9, §11A-3-11, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, §11A-3-29, §11A-3-30, §11A-3-31 and §11A-3-32 of said code, all relating to delinquent land sales by the sheriff generally; authorizing the auditor to perform certain duties related to delinquent land sales by the sheriff instead of being performed by the clerk of the county commission; permitting county commissions to order that the county clerk will continue to perform the duties related to delinquent land sales by the sheriff; requiring the mailing of a notice to redeem to the physical mailing address for the subject property; prohibiting certain assistants from purchasing tax liens; requiring certification of real estate by the sheriff to the auditor where the highest bidder bids at least the amount of taxes, interest and charges for which a tax lien is offered for sale; requiring notice to the purchaser of the requirement to secure a deed; increasing maximum reimbursable amount for certain legal services;

requiring that a person redeeming be given a copy of the written opinion or report used for the preparation of the list of those to be served with notice; authorizing the county clerk to accept and write a receipt for payment made to redeem delinquent lands on behalf of the auditor; requiring that certain reimbursements to purchasers must be for legal services actually performed; enlarging the time within which a quitclaim deed must be delivered; authorizing the auditor to appoint designees; and establishing and increasing fees for services provided.

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 §11A-3-5a and §11A-3-5b; and that §11A-3-6, §11A-3-8, §11A-3-9, §11A-3-11, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, §11A-3-29, §11A-3-30, §11A-3-31 and §11A-3-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-5a. Effective date of transfer of duties for delinquent land sales by sheriff from the county clerk to the State Auditor.
§11A-3-5b. Authorization for county clerk to perform duties for delinquent land sales by sheriff.
§11A-3-6. Purchase by sheriff, State Auditor, deputy commissioner and clerk of county commission prohibited; coowner free to purchase at tax sale.
§11A-3-8. Certification of sold and unsold property to the Auditor.
§11A-3-9. Sheriff's list of sales, suspensions, redemptions and certifications; oath.
§11A-3-11. Return of list of sales, suspensions and redemptions.
§11A-3-14. Purchase by individual at tax sale; certificate of sale.
§11A-3-15. Certificate of sale assignable.
§11A-3-16. Subsequent tax payments by purchaser.
§11A-3-18. Limitations on tax certificates.
§11A-3-19. What purchaser must do before the deed can be secured.
§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

§11A-3-21. Notice to redeem.
§11A-3-22. Service of notice.
§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.
§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.
§11A-3-25. Distribution of surplus to purchaser.
§11A-3-26. Certificate of redemption issued by State Auditor; recordation; disposition of redemption money.
§11A-3-27. Deed to purchaser; record.
§11A-3-28. Compelling service of notice or execution of deed.
§11A-3-29. One deed for adjoining pieces of real estate within the same tax district.
§11A-3-30. Title acquired by individual purchaser; action to quiet title.
§11A-3-31. Effect of irregularity on title acquired by purchaser.
§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.

§11A-3-5a. Effective date of transfer of duties for delinquent land sales by sheriff from the county clerk to the State Auditor.

Effective July 1, 2010, the rights, duties and benefits of the county clerk set out in sections fourteen, sixteen, eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one of this article, for all real properties already purchased at the delinquent land sales by the sheriff and for all real properties subsequently purchased at the delinquent land sales by the sheriff, are transferred to the State Auditor.

§11A-3-5b. Authorization for county clerk to perform duties for delinquent land sales by sheriff.

(a) If the clerk of the county commission wants to perform the duties of the State Auditor and retain the fees incident to the duties as set forth in sections fourteen, sixteen, eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one of this article, then the clerk of the county commission shall petition its county commission for authorization.

(b) The county commission's order for authorization must be entered, certified and received by the State Auditor on or before October 1 and will apply to all real properties subsequently purchased at the delinquent land sales by the sheriff: *Provided,* That if a county clerk wants to retain the duties and fees set forth in this section on the enactment of this section in 2010, then the county commission's order for authorization must be entered, certified and received by the State Auditor on or before August 1, 2010, and will apply to all real properties already purchased at the delinquent land sales by the sheriff and to all real properties subsequently purchased at the delinquent land sales by the sheriff.

(c) The county commission's order for authorization remains in effect until a new order rescinding the authorization is entered and certified by the county commission and is received by the State Auditor on or before October 1 and applies to all real properties subsequently purchased at the delinquent land sales by the sheriff.

(d) As long as the county commission's order for authorization remains in effect, the county clerk is authorized to perform the duties of the State Auditor and retain the fees incident to the duties as set forth in sections fourteen, sixteen, eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one of this article.

§11A-3-6. Purchase by sheriff, State Auditor, deputy commissioner and clerk of county commission prohibited; coowner free to purchase at tax sale.

(a) A sheriff, clerk of the county commission or circuit court, assessor, State Auditor, or deputy or assistant of any of them, shall not directly or indirectly become the purchaser, or be interested in the purchase, of any tax lien on any real

5 estate at the tax sale or receive any tax deed conveying the
6 real estate. Any officer purchasing a tax lien shall forfeit
7 $1,000 for each offense. The sale of a tax lien on any real
8 estate, or the conveyance of the real estate by tax deed, to one
9 of the officers named in this section is voidable, at the
10 instance of any person having the right to redeem, until the
11 real estate reaches the hands of a bona fide purchaser.

12 (b) Any coowner, except a coparcener, in the absence of
13 satisfactory proof of a fiduciary relationship, is entitled to
14 acquire by tax purchase for his or her own account the tax
15 lien on the interest of any, or all, of his or her coowners in
16 any real estate, and to receive a tax deed conveying the
17 interest without being required to hold the tax lien or interest
18 or interests under any constructive trust. There shall be a
19 prima facie presumption against the existence of any
20 constructive trust.

§11A-3-8. Certification of sold and unsold property to the Auditor.

1 (a) If no person present bids the amount of taxes, interest
2 and charges due on any real estate offered for sale, the sheriff
3 shall certify the real estate to the Auditor for disposition
4 pursuant to section forty-four of this article, subject,
5 however, to the right of redemption provided by section
6 thirty-eight of this article. The Auditor shall prescribe the
7 form by which the sheriff certifies the property.

8 (b) If the highest bidder present at the sale, as provided
9 in section five of this article, bids and pays, at a minimum,
10 the amount of taxes, interest and charges for which the tax
11 lien on any real estate is offered, the sheriff shall certify the
12 real estate to the State Auditor for disposition pursuant to
13 section fourteen of this article.

§11A-3-9. Sheriff's list of sales, suspensions, redemptions and certifications; oath.

(a) As soon as the sale provided in section five of this article has been completed, the sheriff shall prepare a list of all tax liens on delinquent real estate purchased at the sale, or suspended from sale, or redeemed before sale, or certified to the Auditor. The heading of the list shall be in form or effect as follows:

List of sales of tax liens on real estate in the county of _____, returned delinquent for nonpayment of taxes thereon for the year (or years) 20 , and sold in the month (or months) of _____ , 20 , or suspended from sale, or redeemed before sale, or certified to the Auditor.

(b) The sheriff shall, at the foot of the list, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, _____, sheriff (or deputy sheriff or collector) of the county of _____, do swear that the above list contains a true account of all the tax liens on real estate within my county returned delinquent for nonpayment of taxes thereon for the year (or years) 20 , which were sold by me or which were suspended from sale or redeemed before sale or certified to the Auditor, and that I am not now, nor have I at any time been, directly or indirectly interested in the purchase of any such tax liens.

(c) Except for the heading and the oath, the State Auditor shall prescribe the form of the list.

§11A-3-11. Return of list of sales, suspensions and redemptions.

(a) Within one month after completion of the sale, the sheriff shall deliver the original list of sales, suspensions and

redemptions described in section nine of this article, with a copy thereof, to the clerk of the county commission. The clerk shall bind the original of such list in a permanent book to be kept for the purpose in his or her office. The clerk, within ten days after delivery of the list to him or her, shall transmit the copy to the State Auditor, who shall note each sale, suspension, redemption and certification on the record of delinquent lands kept in his or her office.

(b) Any sheriff who fails to prepare and return the list of sales, suspensions, redemptions and certifications within the time required by this section shall forfeit not less than $50 nor more than $500, for the benefit of the general school fund, to be recovered by the State Auditor or by any taxpayer of the county on motion in a court of competent jurisdiction. Upon the petition of any person interested, the sheriff may be compelled by mandamus to make out and return the list and the proceedings thereon shall be at his or her cost.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

(a) If the highest bidder present at the sale provided in section five of this article, bids and pays at least the amount of taxes, interest and charges for which the tax lien on any real estate is offered for sale, the sheriff shall issue to him or her a certificate of sale for the purchase money, retain the original certificate for his or her file and forward a copy to the State Auditor, except the sheriff shall require payment of any subsequent taxes due at the time of the sale before a certificate of sale is issued. The heading of the certificate shall be:

Memorandum of tax lien on real estate sold in the county of _____ on this _____ day of _____, 20__, for the nonpayment of taxes charged thereon for the year (or years) 20__.

(b) Except for the heading, the State Auditor shall prescribe the form of the receipt.

(c) The certificate of sale shall describe the real estate subject to the tax lien that was sold, the total amount of all taxes, interest, penalties and costs paid for each lot or tract and the rate of interest to which the purchaser is entitled upon redemption. The certificate shall also set forth columns for the entry of subsequent years taxes paid and costs required by the sheriff to be paid on the date of the sale and for the entry of subsequent taxes and costs paid. For each certificate delivered, the purchaser shall pay a fee of $10 and that amount shall be included in the costs described in the certificate.

(d) The State Auditor shall send a notice of the requirements to secure a deed to the purchaser, or an assignee, by first-class mail. The notice shall be mailed to the last known address of each person who received a certificate of sale from the sheriff and shall be mailed between May 1 and September 1 of the year following the sheriff's sale: *Provided,* That when a person purchased more than one parcel of real property upon which a certificate of sale was issued, the State Auditor may, at his or her option, prepare and mail separate notices for each purchase to the purchaser or may prepare and mail a single notice of all purchases made by the purchaser. In no event shall failure to receive the notice by the purchaser, or the assignee, affect the procedures required by section nineteen of this article.

§11A-3-15. Certificate of sale assignable.

The certificate of sale shall be assignable by endorsement, and an assignment of the certificate, recorded with the clerk of the county commission, vests in the assignee or his or her legal representative all the right and title of the original purchaser. The recording fee for an assignment of a certificate of sale is $10.

§11A-3-16. Subsequent tax payments by purchaser.

Any person who has paid any subsequent taxes, other than the subsequent taxes paid on the date of the sale as provided in section fourteen of this article, on lands for which he or she holds the certificate of sale described in section fourteen or fifteen of this article shall produce the certificate and copies of paid tax receipts to the State Auditor, who shall endorse the amount of the subsequent taxes and the date of payment of the taxes in his or her records upon the payment to the State Auditor of a fee for the endorsement in the amount of $10.

§11A-3-18. Limitations on tax certificates.

(a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on account of any delinquent property taxes may remain a lien on the real property for a period longer than eighteen months after the original issuance of the tax certificate of sale.

(b) All rights of a purchaser shall be considered forfeited and expired and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale where the certificate has ceased to be a lien pursuant to the provisions of this section and application for the tax deed, pursuant to the provisions of section twenty-seven of this article, is not pending at the time of the expiration of the limitation period provided in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the State Auditor shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation and the State Auditor shall also make proper entries in his or her records. The State Auditor shall also

present a copy of every certificate of cancellation to the sheriff who shall enter it in the sheriff's records and the certificate and the record are prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate on the lands described in the certificate. Failure to record the certificate of cancellation does not extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled to any fees for the issuing of the certificate of cancellation nor for the entries in their books made under the provisions of this subsection.

§11A-3-19. What purchaser must do before the deed can be secured.

(a) At any time after October 31 of the year following the sheriff's sale, and on or before December 31 of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the State Auditor to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article;

(2) When the real property subject to the tax lien is classified as Class II property, provide the State Auditor with the physical mailing address of the property that is subject to the tax lien or liens purchased;

(3) Provide the State Auditor with a list of any additional expenses incurred after January 1 of the year following the sheriff's sale for the preparation of the list of those to be served with notice to redeem including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services of any attorney who has performed an examination of the title to the

real estate and rendered written documentation used in the preparation of the list of those to be served with the notice to redeem;

(4) Deposit with the State Auditor a sum sufficient to cover the costs of preparing and serving the notice; and

(5) Present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the State Auditor.

If the purchaser fails to meet these requirements, he or she shall lose all the benefits of his or her purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the State Auditor a written assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in the land sold for delinquent taxes, or any assignment of the lien is lost or wrongfully withheld from the rightful owner of the land and the land or interest has not been redeemed, the county commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor, to be delivered to the rightful claimant and a record of the certificate shall be duly made by the county clerk in the recorded proceedings of the commission.

§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

If, by December 31 of the year following payment of the amount bid at a sheriff's sale, the purchaser discovers that the lien purchased at that sale is the subject of an erroneous assessment or is otherwise nonexistent, the purchaser shall submit the abstract or certificate of an attorney at law that the property is the subject of an erroneous assessment or is otherwise nonexistent. Upon receipt of the abstract or certificate, the sheriff shall cause any money paid to be refunded. Upon refund, the sheriff shall inform the assessor and the State Auditor of the erroneous assessment for the purpose of having the assessor correct the error. For failure to meet this requirement, the purchaser shall lose all benefits of his or her purchase.

§11A-3-21. Notice to redeem.

(a) Whenever the provisions of section nineteen of this article have been complied with, the State Auditor shall prepare a notice in form or effect as follows:

To _____.

You will take notice that _____, the purchaser (or _____, the assignee, heir or devisee of _____, the purchaser) of the tax lien(s) on the following real estate, _____, (here describe the real estate for which the tax lien(s) thereon were sold) located in _____, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of _____, and for which the tax lien(s) thereon was sold by the sheriff of _____ County at the sale for delinquent taxes made on the _____ day of _____, 20, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 20 ____, as provided

by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the last day, March 31, will be as follows:

Amount equal to the taxes, interest, and charges due on the date of sale, with interest to March 31, 20 ____ .....$_____

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 20 ____ ..... $_____

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest from January 1, 20 (insert year) following the sheriff's sale to March 31, 20 ____ ..... $_____

Amount paid for other statutory costs (describe) _____ ..... $_____

Total ..... $_____

You may redeem at any time before March 31, 20 _____, by paying the above total less any unearned interest.

Given under my hand this ____ day of _____, 20 __.

_____

State Auditor, State of West Virginia

(b) The State Auditor for his or her service in preparing the notice shall receive a fee of $10 for the original and $2 for each copy required. Any additional costs which must be expended for publication, or service of the notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the State Auditor. All costs provided by this

section shall be included as redemption costs and included in the notice described in this section.

§11A-3-22. Service of notice.

(a) As soon as the State Auditor has prepared the notice provided in section twenty-one of this article, he or she shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of section nineteen of this article.

(b) The notice shall be served upon all persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested. The notice shall be served on or before the thirtieth day following the request for the notice.

(c) If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he or she shall be served at that address by certified mail, return receipt requested.

(d) If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth in this section and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed

and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the State Auditor issues the required notices by certified mail, the State Auditor shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, addressed to "Occupant", to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the tax lien pursuant to the provisions of section nineteen of this article.

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section five of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) Any additional expenses incurred from January 1 of the year following the sheriff's sale to the date of redemption

for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: *Provided,* That the maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by section nineteen of this article is $300: *Provided, however,* That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by section nineteen of this article; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in section nineteen of this article, the person redeeming shall pay the State Auditor the sum of $300 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of sections ten, twenty-four, twenty-five and thirty-two of this article.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

(e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor, the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt. The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall be provided by the State Auditor and the State Auditor shall update the required payments plus interest at least monthly.

(f) On or before the tenth day of each month, the county clerk shall deliver to the State Auditor the redemption money paid and the name and address of the person who redeemed the property on a form prescribed by the State Auditor.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment made by cashier check, money order, certified check or United States currency in the amount necessary to redeem, the State Auditor shall deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs and assigns. The State

Auditor shall also note the fact of redemption on his or her record of delinquent lands.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall deposit into the sale of tax lien surplus fund, provided by section ten of this article, an amount equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption, the amount of the subsequent years' taxes paid the day of or after the sheriff's sale, plus interest at the rate of one percent per month thereon from the date of payment to the date of redemption, the amount of any additional expenses incurred after January 1 of the year following the sheriff's sale for the preparation of the list of those to be served with notice to redeem and any examination of title performed pursuant to the provisions of section nineteen of this article, plus interest at a rate of one percent per month from the date of payment to the date of redemption. In cases where the State Auditor has not received from the purchaser satisfactory proof of additional expenses incurred after January 1 of the year following the sheriff's sale as provided in section twenty-three of this article, the sheriff shall deposit the money received in the sale of tax lien surplus fund provided by section ten of this article.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in section twenty-three of this article, and the State Auditor has delivered the redemption money to the sheriff pursuant to section twenty-four of this article, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the purchaser or his or her heirs or assigns, by mail, of the fact of the redemption and pay to the purchaser or his or her heirs or assigns the following amounts:

(1) From the sale of tax lien surplus fund provided by section ten of this article:

(A) The surplus of money paid in excess of the amount of the taxes, interest and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with section nineteen of this article, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article shall not exceed the amount actually incurred by the purchaser or $300, whichever is less: *Provided,* That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by section nineteen of this article; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with section nineteen of this article, the State Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to section twenty-three of this article, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within thirty days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of $300 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale to the date of the sale to the date of redemption, and the purchaser provides the

sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-26. Certificate of redemption issued by State Auditor; recordation; disposition of redemption money.

(a) Upon payment of the sum necessary to redeem, the State Auditor shall execute a certificate of redemption in quadruplicate, which certificate shall:

(1) Specify the real estate redeemed, or the part thereof or the interest in the real estate, as the case may be, together with any changes in respect to the real estate which were made in the landbook and in the record of delinquent lands;

(2) Specify the year or years for which payment was made; and

(3) State that it is a receipt for the money paid and a release of the tax lien on the real estate redeemed.

(b) The original certificate shall be retained in the files in the State Auditor's office, one copy shall be delivered to the person redeeming, one copy to the sheriff and one copy to be retained in the files of the clerk of the county commission. The clerk shall record the certificate in a separate volume provided for that purpose.

(c) The fee for issuing the certificate of redemption is $35, of which $10 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) All certificates of redemption issued by the State Auditor in each year shall be numbered consecutively and

shall be filed with the clerk of the county commission. Reference to the year and number of the certificate shall be included in the notation of redemption required in this section. No fee shall be charged by the clerk for any recordation, filing or notation required by this section.

§11A-3-27. Deed to purchaser; record.

(a) If the real estate described in the notice is not redeemed within the time specified in the notice, then from April 1 of the second year following the sheriff's sale until the expiration of the lien evidenced by a tax certificate of sale issued by a sheriff for the real estate as provided in section eighteen of this article, the State Auditor or his or her deputy shall upon request of the purchaser make and deliver to the clerk of the county commission subject to the provisions of section eighteen of this article, a quitclaim deed for the real estate in form or effect as follows:

This deed made this _____ day of _____, 20 ___, by and between _____, State Auditor, West Virginia, (or by and between _____, a commissioner appointed by the circuit court of _____ County, West Virginia) grantor, and _____, purchaser, (or _____, heir, devisee or assignee of _____, purchaser), grantee, witnesseth, that:

Whereas, In pursuance of the statutes in such case made and provided, _____, Sheriff of _____ County, (or _____, deputy for _____, Sheriff of _____ County), (or _____, collector of _____ County), did, in the month of _____, in the year 20 ____, sell the tax lien(s) on real estate, hereinafter mentioned and described, for the taxes delinquent thereon for the year (or years) 20 ____, and _____, (here insert name of purchaser) for the

sum of $_____, that being the amount of purchase money paid to the sheriff, did become the purchaser of the tax lien(s) on such real estate (or on _____ acres, part of the tract or land, or on an undivided _____ interest in such real estate) which was returned delinquent in the name of _____; and

Whereas, The State Auditor has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, The tax lien(s) on the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set in such notice has expired;

Now, therefore, the grantor, for and in consideration of the premises and in pursuance of the statutes, doth grant unto _____, grantee, his or her heirs and assigns forever, the real estate on which the tax lien(s) so purchased existed, situate in the county of _____, bounded and described as follows: _____

Witness the following signature: _____ State Auditor.

(b) Except when ordered to do so, as provided in section twenty-eight of this article, the State Auditor may not execute and deliver a deed more than sixty days after the person entitled to the deed delivers the same and requests the execution of the deed.

(c) For the execution of the deed and for all the recording required by this section, a fee of $50 and the recording and transfer tax expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in the clerk's office,

59 together with any assignment from the purchaser, if one was
60 made, the notice to redeem, the return of service of the
61 notice, the affidavit of publication, if the notice was served
62 by publication, and any return receipts for notices sent by
63 certified mail.

64 (d) The State Auditor shall appoint employees of his or
65 her office to act as his or her designee to effect the purposes
66 of this section.

§11A-3-28. Compelling service of notice or execution of deed.

1 (a) If the State Auditor fails or refuses to prepare and
2 serve the notice to redeem as required in sections twenty-one
3 and twenty-two of this article, the person requesting the
4 notice may, at any time within two weeks after discovery of
5 the failure or refusal, but in no event later than sixty days
6 following the date the person requested that notice be
7 prepared and served, apply by petition to the circuit court of
8 the county for an order compelling the State Auditor to
9 prepare and serve the notice or appointing a commissioner to
10 do so. If the person requesting the notice fails to make
11 application within the time allowed, he or she shall lose his
12 or her right to the notice, but his or her rights against the
13 State Auditor under the provisions of section sixty-seven of
14 this article shall not be affected. Notice given pursuant to an
15 order of the court or judge shall be as valid for all purposes
16 as if given within the time required by section twenty-two of
17 this article.

18 (b) If the State Auditor fails or refuses to execute the
19 deed as required in section twenty-seven of this article, the
20 person requesting the deed may, at any time after such failure
21 or refusal, but not more than six months after his or her right
22 to the deed accrued, apply by petition to the circuit court of
23 the county for an order compelling the State Auditor to
24 execute the deed or appointing a commissioner to do so. If

the person requesting the deed fails to make an application within the time allowed, he or she shall lose his or her right to the deed, but his or her rights against the State Auditor under the provisions of section sixty-seven of this article shall not be affected. Any deed executed pursuant to an order of the court or judge shall have the same force and effect as if executed and delivered by the State Auditor within the time specified in section twenty-seven of this article.

(c) Ten days' written notice of every application must be given to the State Auditor. If, upon the hearing of the application, the court or judge is of the opinion that the applicant is not entitled to the notice or deed requested, the petition shall be dismissed at his or her costs; but if the court or judge is of the opinion that he or she is entitled to the notice or deed, then, upon his or her deposit with the clerk of the circuit court of a sum sufficient to cover the costs of preparing and serving the notice, unless a deposit has already been made with the State Auditor, an order shall be made by the court or judge directing the State Auditor to prepare and serve the notice or execute the deed, or appointing a commissioner for the purpose, as the court or judge shall determine. If it appears to the court or judge that the failure or refusal of the State Auditor was without reasonable cause, judgment shall be given against him or her for the costs of the proceedings; otherwise the costs shall be paid by the applicant.

(d) Any commissioner appointed under the provisions of this section shall be subject to the same liabilities as are provided for the State Auditor. For the preparation of the notice to redeem, he or she shall be entitled to the same fee as is provided for the State Auditor. For the execution of the deed, he or she shall also be entitled to a fee of $50 and the recording and transfer expenses, to be paid by the grantee upon delivery of the deed.

§11A-3-29. One deed for adjoining pieces of real estate within the same tax district.

(a) Whenever one purchaser at the tax sale has purchased tax liens on two or more adjoining pieces of real estate within the same tax district, or undivided interests therein, charged with taxes for the same year, or years, he or she, his or her heirs or assigns may request the State Auditor to execute a separate deed for each adjoining piece of real estate within the same tax district, or undivided interest therein, or separate deeds for some and one deed for the remainder, or one deed for all, as he, she or they may prefer.

(b) Every deed for two or more pieces of adjoining real estate within the same tax district, or undivided interests therein, shall describe each piece of real estate and each undivided interest separately.

§11A-3-30. Title acquired by individual purchaser; action to quiet title.

(a) Whenever the purchaser of any tax lien on any real estate sold at a tax sale, his or her heirs or assigns has obtained a deed for the real estate from the State Auditor or from a commissioner appointed to make the deed, he or she or they shall acquire all right, title and interest, in and to the real estate, as was, at the time of the execution and delivery of the deed, vested in or held by any person who was entitled to redeem, unless that person is one who, being required by law to have his or her interest separately assessed and taxed, has done so and has paid all the taxes due on the real estate, or unless the rights of that person are expressly saved by the provisions of section six of this article or section two, three, four or six, article four of this chapter.

(b) The tax deed shall be conclusive evidence of the acquisition of title. The title acquired shall relate back to

July 1 of the year in which the taxes, for nonpayment of which the tax lien on the real estate was sold, were assessed.

(c) Any individual purchaser to whom a tax deed has been issued may institute and prosecute actions to quiet title in any real estate conveyed by the tax deed. The action may be maintained for all or any one or more of the lots or tracts conveyed.

§11A-3-31. Effect of irregularity on title acquired by purchaser.

No irregularity, error or mistake in respect to any step in the procedure leading up to and including delivery of the tax deed by the State Auditor shall invalidate the title acquired by the purchaser unless the irregularity, error or mistake is, by the provisions of section six of this article or section two, three, four or six, article four of this chapter, expressly made a ground for instituting a suit to set aside the sale or the deed.

§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.

(a) The sheriff shall keep in a separate fund the proceeds of all redemptions and sales paid to him or her under the provisions of this chapter, except for those proceeds for which a separate fund is directed by the provisions of section sixty-four of this article. Out of the total proceeds of each sale or redemption he or she shall in the order of priority stated below credit the following amounts, for payment as provided in this section:

(1) To the general county fund, the part that represents costs paid out of the fund for publishing the sheriff's delinquent and sales list and all other costs incurred by the sheriff pursuant to the provisions of this article;

(2) Surplus proceeds from the sale of tax liens on delinquent lands shall be held by the sheriff for the periods provided for in section ten of this article, and if no application is made within the time specified, the surplus shall be distributed by the sheriff in the manner provided by law for the distribution of property taxes collected by him or her; and

(3) The balance, if any, of the proceeds of the lands included in each suit shall be prorated among the various taxing units on the basis of the total amount of taxes due them in respect to the lands that were sold or redeemed.

(b) The amounts so determined shall be credited as follows, for payment as provided in this subsection:

(1) To the State Auditor, the part that represents state taxes and interest; and

(2) To the fund kept by the sheriff for each local taxing unit, the part that represents taxes and interest payable to the unit.

(c) All amounts which under the provisions of this section were credited by the sheriff to the Auditor shall be paid to him or her semiannually; and those credited to the various local taxing units shall be transferred semiannually by the sheriff to the fund kept by him or her for each taxing unit.

(d) The State Auditor shall prescribe the form of the records to be kept by the sheriff for the purposes of this section, and the method to be used by him or her in making the necessary pro rata distributions.

CHAPTER 195

(Com. Sub. for H. B. 4486 - By Delegates Frazier, Moore, Ellem and Hunt)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §11A-3-52 and §11A-3-55 of the Code of West Virginia, 1931, as amended, all relating to the procedures, notice and redemption requirements which apply when Class II real property is auctioned or sold for failure to pay taxes; requiring the purchaser of real property at a tax lien sale or auction to provide the actual mailing address for the Class II property as a part of the post-sale or post-auction information provided to the deputy commissioner; and requiring that a copy of the notice of the right to redeem the property be sent to the actual mailing address of the Class II property, in the name of "Occupant".

Be it enacted by the Legislature of West Virginia:

That §11A-3-52 and 11A-3-55 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-52. What purchaser mut do before he can secure a deed.
§11A-3-55. Service of notice.

§11A-3-52. What purchaser must do before he can secure a deed.

(a) Within forty-five days following the approval of the sale by the auditor pursuant to section fifty-one of this article, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article;

(2) When the real property subject to the tax lien was classified as Class II property, provide the deputy commissioner with the actual mailing address of the property that is subject to the tax lien or liens purchased; and

(3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice.

(b) If the purchaser fails to fulfill the requirements set forth in paragraph (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of paragraph (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in section forty-eight of this article.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the deputy commissioner a written assignment to him of the purchaser's rights, executed,

acknowledged and certified in the manner required to make a valid deed.

§11A-3-55. Service of notice.

As soon as the deputy commissioner has prepared the notice provided for in section fifty-four of this article, he shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of section fifty-two of this article. Such notice shall be mailed and, if necessary, published at least thirty days prior to the first day a deed may be issued following the deputy commissioner's sale.

The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested. The notice shall be served on or before the thirtieth day following the request for such notice.

If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of

the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the auditor in his office, together with any return receipts for notices sent by certified mail.

In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the deputy commissioner issues the required notices by certified mail, the deputy commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, addressed to "Occupant", to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the property, pursuant to the provisions of section fifty-two of this article.

CHAPTER 196

(S. B. 583 - By Senators Bowman and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-3-10e, all relating to changing references from the Information Services and Communications Division to the Office of Technology.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §12-3-10e be amended and reenacted, all to read as follows:

Chapter

5A. Department of Administration.
12. Public Moneys and Securities.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4. Powers and duties of the Chief Technology Officer; generally.

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information
4 resource management for this state;

5 (2) Provide technical assistance to the administrators of
6 the various state spending units in the design and
7 management of information systems;

8 (3) Evaluate the economic justification, system design
9 and suitability of information equipment and related services,
10 and review and make recommendations on the purchase,
11 lease or acquisition of information equipment and contracts
12 for related services by the state spending units;

13 (4) Develop a mechanism for identifying those instances
14 where systems of paper forms should be replaced by direct
15 use of information equipment and those instances where
16 applicable state or federal standards of accountability demand
17 retention of some paper processes;

18 (5) Develop a mechanism for identifying those instances
19 where information systems should be linked and information

shared, while providing for appropriate limitations on access and the security of information;

(6) Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

(7) Engage in any other activities as directed by the Governor;

(8) Charge a fee to the state spending units for evaluations performed and technical assistance provided under the provisions of this section. All fees collected by the Chief Technology Officer shall be deposited in a special account in the State Treasury to be known as the Chief Technology Officer Administration Fund. Expenditures from the fund shall be made by the Chief Technology Officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided,* That the provisions of section eighteen, article two, chapter eleven-b of this code shall not operate to permit expenditures in excess of the spending authority authorized by the Legislature. Amounts collected which are found to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(9) Monitor trends and advances in information technology and technical infrastructure;

(10) Direct the formulation and promulgation of policies, guidelines, standards and specifications for the

52 development and maintenance of information technology
53 and technical infrastructure, including, but not limited to:

54 (A) Standards to support state and local government
55 exchange, acquisition, storage, use, sharing and distribution
56 of electronic information;

57 (B) Standards concerning the development of electronic
58 transactions, including the use of electronic signatures;

59 (C) Standards necessary to support a unified approach to
60 information technology across the totality of state
61 government, thereby assuring that the citizens and
62 businesses of the state receive the greatest possible security,
63 value and convenience from investments made in
64 technology;

65 (D) Guidelines directing the establishment of statewide
66 standards for the efficient exchange of electronic
67 information and technology, including technical
68 infrastructure, between the public and private sectors;

69 (E) Technical and data standards for information
70 technology and related systems to promote efficiency and
71 uniformity;

72 (F) Technical and data standards for the connectivity,
73 priorities and interoperability of technical infrastructure
74 used for homeland security, public safety and health and
75 systems reliability necessary to provide continuity of
76 government operations in times of disaster or emergency for
77 all state, county and local governmental units; and

78 (G) Technical and data standards for the coordinated
79 development of infrastructure related to deployment of
80 electronic government services among state, county and
81 local governmental units;

(11) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(12) Direct the compilation and maintenance of an inventory of information technology and technical infrastructure of the state, including infrastructure and technology of all state, county and local governmental units, which may include personnel, facilities, equipment, goods and contracts for service, wireless tower facilities, geographic information systems and any technical infrastructure or technology that is used for law enforcement, homeland security or emergency services;

(13) Develop job descriptions and qualifications necessary to perform duties related to information technology as outlined in this article; and

(14) Promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the administration of the provisions of article six of this chapter.

(b) With respect to executive agencies, the Chief Technology Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and time lines for addressing the information technology requirements of the various executive agencies of state government;

(3) Exercise authority delegated by the Governor by executive order to overrule and supersede decisions made by

112 the administrators of the various executive agencies of
113 government with respect to the design and management of
114 information systems and the purchase, lease or acquisition
115 of information equipment and contracts for related services;

116 (4) Draw upon staff of other executive agencies for
117 advice and assistance in the formulation and implementation
118 of administrative and operational plans and policies; and

119 (5) Recommend to the Governor transfers of equipment
120 and human resources from any executive agency and the
121 most effective and efficient uses of the fiscal resources of
122 executive agencies, to consolidate or centralize information-
123 processing operations.

124 (c) The Chief Technology Officer may employ the
125 personnel necessary to carry out the work of the Office of
126 Technology and may approve reimbursement of costs
127 incurred by employees to obtain education and training.

128 (d) The Chief Technology Officer shall develop a
129 comprehensive, statewide, four-year strategic information
130 technology and technical infrastructure policy and
131 development plan to be submitted to the Governor and the
132 Joint Committee on Government and Finance. A preliminary
133 plan shall be submitted by December 1, 2006, and the final
134 plan shall be submitted by June 1, 2007. The plan shall
135 include, but not be limited to:

136 (A) A discussion of specific projects to implement the
137 plan;

138 (B) A discussion of the acquisition, management and use
139 of information technology by state agencies;

140 (C) A discussion of connectivity, priorities and
141 interoperability of the state's technical infrastructure with the

technical infrastructure of political subdivisions and encouraging the coordinated development of facilities and services regarding homeland security, law enforcement and emergency services to provide for the continuity of government operations in times of disaster or emergency;

(D) A discussion identifying potential market demand areas in which expanded resources and technical infrastructure may be expected;

(E) A discussion of technical infrastructure as it relates to higher education and health;

(F) A discussion of the use of public-private partnerships in the development of technical infrastructure and technology services; and

(G) A discussion of coordinated initiatives in website architecture and technical infrastructure to modernize and improve government to citizen services, government to business services, government to government relations and internal efficiency and effectiveness of services, including a discussion of common technical data standards and common portals to be utilized by state, county and local governmental units.

(e) The Chief Technology Officer shall oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent. The Chief Technology Officer shall establish microwave or other networks and LATA hops; audit telecommunications services and usage; recommend and develop strategies for the discontinuance of obsolete or excessive utilization; participate in the renegotiation of telecommunications contracts; and encourage the use of technology and take other actions necessary to provide the greatest value to the state.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

1 (a) There is continued a Purchasing Card Advisory
2 Committee to enhance the development and implementation
3 of the purchasing card program. The committee shall solicit
4 input from state agencies and make recommendations to
5 improve the performance of the Purchasing Card Program.
6 The committee consists of fourteen members to be appointed
7 as follows:

8 (1) The Auditor shall serve as chairperson of the
9 committee and shall appoint:

10 (A) Four members from the State College System of West
11 Virginia and the University System of West Virginia;

12 (B) One member from the Department of Health and
13 Human Resources; and

14 (C) One member from the Division of Highways and two
15 additional members at large from any state agency.

16 (2) The Secretary of the Department of Administration
17 shall appoint:

18 (A) One member from the Office of Technology;

19 (B) One member from the Financial Accounting and
20 Reporting Section; and

21 (C) One member from the Purchasing Division;

22 (3) The Secretary of the Department of Revenue shall
23 appoint one member from the Department of Revenue; and

24 (4) The State Treasurer shall appoint one member from
25 that office.

26 (b) Committee members shall be appointed for a term of
27 one year, commencing on the July 1, 1998. Committee
28 members shall receive reimbursement for expenses actually
29 incurred in the performance of their duties on the committee.

CHAPTER 197

(Com. Sub. for H. B. 2773 - By Delegates Lawrence, Fragale, Perdue, Sobonya, Paxton, D. Walker, Stowers, Moore, Eldridge, Hall and Smith)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §16-9A-2 and §16-9A-3 of the Code of West Virginia, 1931, as amended, all relating to prohibited access and usage of tobacco products by minors; increasing the monetary penalties for selling tobacco products to minors; providing that the sale or furnishing of tobacco products to minors may constitute grounds for dismissal as an act of misconduct; clarifying the impact of such a dismissal on the discharged employees' eligibility to receive unemployment benefits; and increasing the monetary penalties for minors possessing tobacco products.

Be it enacted by the Legislature of West Virginia:

That §16-9A-2 and §16-9A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.

(a) No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

(1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or

(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any of the provisions of subdivision (1) or (2), subsection (a) of this section and any individual who violates any of the provisions of subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $50 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: At least $250 but not more than $500 for the second offense, if it occurs within two

18 years of the first conviction; at least $500 but not more than
19 $750 for the third offense, if it occurs within two years of the
20 first conviction; and at least $1,000 but not more than $5,000
21 for any subsequent offenses, if the subsequent offense occurs
22 within five years of the first conviction.

23 (c) Any individual who knowingly and intentionally sells,
24 gives or furnishes or causes to be sold, given or furnished to
25 any person under the age of eighteen years any cigar,
26 cigarette, snuff, chewing tobacco or tobacco product, in any
27 form, is guilty of a misdemeanor and, upon conviction thereof,
28 for the first offense shall be fined not more than $100; upon
29 conviction thereof for a second or subsequent offense, is guilty
30 of a misdemeanor and shall be fined not less than $100 nor
31 more than $500.

32 (d) Any employer who discovers that his or her employee
33 has sold or furnished tobacco products to minors may dismiss
34 such employee for cause. Any such discharge shall be
35 considered as "gross misconduct" for the purposes of
36 determining the discharged employee's eligibility for
37 unemployment benefits in accordance with the provisions of
38 section three, article six, chapter twenty-one-a of this code, if
39 the employer has provided the employee with prior written
40 notice in the workplace that such act or acts may result in their
41 termination from employment.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalties.

1 No person under the age of eighteen years shall have on or
2 about his or her person or premises or use any cigarette, or
3 cigarette paper or any other paper prepared, manufactured or
4 made for the purpose of smoking any tobacco products, in any
5 form; or, any pipe, snuff, chewing tobacco or tobacco product:
6 *Provided*, That minors participating in the inspection of
7 locations where tobacco products are sold or distributed

8 pursuant to section seven of this article are not considered to
9 violate the provisions of this section. Any person violating the
10 provisions of this section shall for the first violation be fined
11 $50 and be required to serve eight hours of community
12 service; for a second violation, the person shall be fined $100
13 and be required to serve sixteen hours of community service;
14 and for a third and each subsequent violation, the person shall
15 be fined $200 and be required to serve twenty-four hours of
16 community service. Notwithstanding the provisions of section
17 two, article five, chapter forty-nine, the magistrate court has
18 concurrent jurisdiction.

CHAPTER 198

(Com. Sub. for S. B. 435 - By Senators Kessler, Bowman, Laird, Guills, K. Facemyer, White, Unger, Plymale and Wells)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §17C-6-7 of the Code of West Virginia, 1931, as amended, relating to speed restrictions; prima facie evidence of speed by certain devices; changing Department of Public Safety to State Police in this section of said code; applying this section to all municipalities of the state; requiring law-enforcement officers to receive training on speed-measuring devices in order for evidence of speed to be considered prima facie; requiring the Governor's Committee on Crime, Delinquency and Correction establish a training program and certification standards by January 1, 2012; and requiring law-enforcement officers complete a certified training course in speed detection prior to January 1, 2013.

Be it enacted by the Legislature of West Virginia:

That §17C-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser.

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the State Police, by police officers of incorporated municipalities in classes one, two and three, as defined in chapter eight-a of this code, by police officers of incorporated class four municipalities except upon controlled access or partially controlled access highways, and by the sheriff and his or her deputies. The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle: *Provided*, That the evidence of speed is obtained and detected by a certified law enforcement officer who has completed training for speed measuring devices used to obtain the speed of the motor vehicle: *Provided, however*, That the Governor's Committee on Crime, Delinquency and Correction shall, on or before January 1, 2012, establish or certify an eight-hour training and certification program and standards for speed measuring device training that certified law enforcement officers who utilize speed measuring devices must complete or otherwise satisfy in order for any evidence of speed detected by a speed measuring device put forward by the officer to be accepted of prima facie evidence. All certified law enforcement officers must have completed or otherwise satisfied the requirements of this section prior to January 1, 2013.

27 In order to inform and educate the public generally that
28 speed of motor vehicles operating within the state is being
29 tested by radar or laser mechanisms, the Division of Highways
30 shall locate and place suitable and informative stationary and
31 movable signs at strategic points on and along highways in
32 each county of the state giving notice to the public that such
33 radar or laser mechanisms are in use.

CHAPTER 199

(Com. Sub. for S. B. 352 - By Senators Unger, Fanning, Jenkins, Plymale, Foster, Stollings, D. Facemire and Prezioso)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §13-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-4-47 and §17-4-49 of said code; and to amend said code by adding thereto a new article, designated §17-28-1, §17-28-2, §17-28-3, §17-28-4, §17-28-5, §17-28-6, §17-28-7, §17-28-8, §17-28-9, §17-28-10, §17-28-11 and §17-28-12, all relating generally to the creation of the West Virginia Community Empowerment Transportation Act; authorizing county commissions to issue general obligation bonds for acquiring, maintaining, improving public roads and transportation facilities; giving counties authority to impose, administer, collect and enforce payment of voter-approved user fees to pay for or finance cost of transportation projects within their counties; defining certain terms; giving county commissions authority to issue special revenue bonds to finance transportation projects and including authority to issue refunding bonds; giving authority to take other

actions to finance and complete transportation projects; authorizing the Commissioner of Highways to establish procedures relating to review of transportation projects; making legislative findings; stating legislative purpose; requiring certain governmental entities seeking state funds for transportation projects to submit a transportation project plan to Commissioner of Highways; setting forth transportation project plan requirements; setting forth conditions for approval by the Commissioner of Highways; providing notice, advertisement and election requirements for user fees; providing for a comprehensive agreement for a transportation facility between the sponsoring governmental entity and the Division of Highways; establishing the requirements for qualifying a transportation facility as a public improvement; authorizing information sharing; requiring a bond covering the division for improvements to highway facilities required as a result of development; providing that transportation projects are awarded by competitive bidding and subject to prevailing wages; authorizing municipal utilities and public service districts to include into rates costs borne by the utility in contributing moneys or dedicate revenue to transportation project costs; and regulating access from properties to and from state roads.

Be it enacted by the Legislature of West Virginia:

That §13-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17-4-47 and §17-4-49 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §17-28-1, §17-28-2, §17-28-3, §17-28-4, §17-28-5, §17-28-6, §17-28-7, §17-28-8, §17-28-9, §17-28-10, §17-28-11 and §17-28-12, all to read as follows:

Chapter

13. Public Bonded Indebtedness.
17. Roads and Highways.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-2. Purposes for which bonds may be issued.

Debt may be incurred and bonds issued under this article for the purpose of acquiring, constructing and erecting, enlarging, extending, reconstructing or improving any building, work, utility or undertaking, or for furnishing, equipping and acquiring or procuring the necessary apparatus for any building, work, improvement or department, or for establishing and maintaining a library or museum for the public use, or a building or structure for educational purposes, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, auditoriums, exhibition halls and theaters, or for other similar corporate purpose, or for the acquiring, constructing, maintaining, repairing, improving public roads and transportation facilities, for which the political division is authorized to levy taxes or expend public money. But no bonds shall be issued for the purpose of providing funds for the current expenses of any body or political division. Interest accruing during the construction period, that is to say, the time when an improvement is under construction and six months thereafter, shall be deemed a part of the cost of the improvement, and shall not be deemed current expenses. All engineering and inspection costs, including a proper proportion of the compensation, salaries and expenses of the engineering staff of the political division properly chargeable to any work or improvements, as determined by the governing body, or the estimated amount of such costs, shall be deemed part of the cost of an improvement. All costs and estimated costs of the issuance of bonds shall be deemed a part of the cost of the work or improvement, or of the property, or of the carrying out of the purposes for which such bonds are to be issued. The power to acquire or construct any building, work or improvement as herein provided shall be deemed to include

the power to acquire the necessary lands, sites and rights-of-way therefor.

Bonds may also be issued by any municipality having a population of fifty thousand or more or by any county for the purpose of acquiring land and constructing a building or buildings for use and occupancy as a college. The proposal for such a bond issue shall contain a provision that there shall be created a commission or committee for the purpose of operating the building or buildings and for renting the same for an amount sufficient to pay the interest and sinking fund on the bonds proposed to be issued, and shall contain a further provision that in the event a sufficient amount is not realized from rent or rents for the purpose of meeting the debt service, then the city or county shall lay a levy for such purpose in an amount sufficient within the constitutional and statutory limitation to pay the interest and principal on such bonds as the same become due and payable. The proposal may also contain a provision that when the bonds and the interest thereon shall have been paid, then the title to the land and the building or buildings situated thereon may be transferred to the college to which the same have been rented.

CHAPTER 17. ROADS AND HIGHWAYS.

Article

4. State Road System.
28. West Virginia Community Empowerment Transportation Act.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-47. Access from commercial, etc., property and subdivisions to highways -- Purposes of regulation; right of access; provisions inapplicable to controlled-access facilities; removal of unauthorized access; bond for access.
§17-4-49. Same -- Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner's preliminary determination.

§17-4-47. Access from commercial, etc., property and subdivisions to highways -- Purposes of

regulation; right of access; provisions inapplicable to controlled-access facilities; removal of unauthorized access; bond for access.

(a) Reciprocal access between state highways and real property used or to be used for commercial, industrial or mercantile purposes and reciprocal access between state highways and real property that is subdivided into lots is a matter of public concern and shall be regulated by the Commissioner of Highways to achieve the following purposes:

(1) To provide for maximum safety of persons traveling upon, entering or leaving state highways;

(2) To provide for efficient and rapid movement of traffic upon state highways;

(3) To permit proper maintenance, repair and drainage of state highways; and

(4) To facilitate appropriate public use of state highways.

(b) Except where the right of access has been limited by or pursuant to law, every owner or occupant of real property abutting upon any existing state highway has a right of reasonable means of ingress to and egress from such state highway consistent with those policies expressed in subsection (a) of this section and any regulations issued by the commissioner under section forty-eight of this article.

(c) If the construction, relocation or reconstruction of any state highway, to be paid for, in whole or in part, with federal or state road funds, results in the abutment of real property as defined in subsection (a) of this section on the state highway that did not previously abut on it, no rights of direct access shall accrue because of such abutment. However, the

commissioner may authorize or limit access from an abutting property if the property is compatible with the policies stated in subsection (a) of this section and any regulations issued by the commissioner as authorized by section forty-eight of this article.

(d) The policies expressed in this section are applicable to state highways generally and shall in no way limit the authority of the Commissioner of Highways to establish controlled-access facilities under sections thirty-nine through forty-six, inclusive, of this article.

(e) Any unauthorized access to a state highway may be removed, blocked, barricaded or closed in any manner considered necessary by the commissioner to protect the safety of the public and enforce the policies of this section and sections forty-eight, forty-nine and fifty of this article.

(f) As a condition of granting access to a state highway, the commissioner may require the owners of real property developed or to be developed to provide a bond in an amount the commissioner determines necessary to compensate the division for improvements to highway facilities required as a result of the development. This bond shall be held a maximum of ten years: *Provided,* That no bond shall be required for any residential development consisting of one hundred homes or less.

§17-4-49. Same -- Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner's preliminary determination.

(a) No new points of access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes may be opened, constructed or maintained without first complying with this section and

5 sections forty-seven and forty-eight of this article. Access
6 points opened, constructed or maintained without compliance
7 are unauthorized.

8 (b) Plans for any new point of access shall be submitted to
9 the Commissioner of Highways directly and the following
10 rules shall apply:

11 (1) Notice of the proposed new point of access shall be
12 filed with the commissioner, along with a plan of the proposed
13 new point of access.

14 (2) The commissioner shall review the plan to ensure
15 compliance with the policies stated in section forty-seven of
16 this article and with any regulations issued by the
17 commissioner under section forty-eight of this article.

18 (3) If the commissioner objects to a plan, he or she shall
19 reduce his or her objections to the proposed new point of
20 access to writing and promptly furnish notice of the objection
21 to the owner or owners of the real property affected and advise
22 the owner or owners of the right to demand a hearing on the
23 proposed plan and the objections. If a plan is not objected to
24 within six weeks from the time it is filed with the
25 commissioner, it is considered approved by the commissioner.

26 (4) In any case where the commissioner objects to the
27 proposed new point of access, the owner or owners of the real
28 property affected shall have reasonable opportunity for a
29 hearing on such objections.

30 (c)(1) Existing points of access to and from state highways
31 from and to real property used for commercial, industrial or
32 mercantile purposes may be reviewed by the commissioner to
33 determine whether such points of access comply with the
34 policies stated in section forty-seven of this article and with
35 any regulations issued by the commissioner under section

forty-eight of this article. The commissioner may direct reasonable changes in existing points of access to and from state highways from and to property used for commercial, industrial or mercantile purposes if he or she determines from accident reports or traffic surveys that the public safety is seriously affected by such points of access and that such reasonable changes would substantially reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done at state expense as any other construction, reconstruction or repair.

(2) If the commissioner makes a preliminary determination that any changes should be made, the following rules apply:

(A) The commissioner shall reduce his or her preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing on the preliminary determination. The commissioner's notice shall include a description of suggested changes suitable for reducing the hazard to the public safety.

(B) In any case where the commissioner makes a preliminary determination that any changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on the preliminary determination.

ARTICLE 28. WEST VIRGINIA COMMUNITY EMPOWERMENT TRANSPORTATION ACT.

§17-28-1. Short title.
§17-28-2. Legislative findings.
§17-28-3. Definitions.
§17-28-4. Governmental entities to submit transportation project requests to commissioner of highways generally; commissioner's powers and duties to implement the act; transportation project plan requirements; Division of Highways plan review; proprietary information.
§17-28-5. Powers conferred on counties; special charges for transportation facilities and projects; election on ordinance for user fees; form of ballots; procedure.

§17-28-6. Issuance of transportation project revenue bonds by county.
§17-28-7. Comprehensive agreement.
§17-28-8. Commissioner's authority over transportation projects accepted into the state road system; use of state road funds.
§17-28-9. Qualifying a transportation project as a public improvement.
§17-28-10. Coordination and development of transportation projects with other infrastructure; information sharing; agreements among municipal utilities and public service districts to participate in transportation projects; rates to include costs borne by municipal utilities and public service districts in coordination with transportation projects; exemption from Public Service Commission approval.
§17-28-11. Excess funds; termination of user fee.
§17-28-12. Severability.

§17-28-1. Short title.

1 This article may be known and referred to as the "West
2 Virginia Community Empowerment Transportation Act."

§17-28-2. Legislative findings.

1 The Legislature finds as follows:

2 (1) That a broad and unified system should be continued
3 and persistently upgraded by state law for financing, planning,
4 designing, constructing, expanding, improving, maintaining
5 and operating the public road system and transportation
6 facilities that together comprise the transportation
7 infrastructure of this state;

8 (2) That, in addition to traditional means and methods of
9 putting transportation infrastructure into place, a significant
10 contribution to a system as described in subdivision one of this
11 section can be made by public-private partnerships that will
12 assist federal, state and local governments in their efforts to
13 meet the evolving needs of governmental entities, industry,
14 labor, commerce, and, most importantly, the citizens of this
15 state;

16 (3) That available public funding necessary to provide for
17 an adequate or more than adequate transportation
18 infrastructure have not kept pace with the needs of the

19 governmental entities that are charged with financing,
20 developing and maintaining an optimal transportation
21 infrastructure in this state;

22 (4) That investment in transportation infrastructure by
23 private entities should be facilitated, and innovative financing
24 mechanisms should be encouraged and developed, so as to
25 utilize private capital and other funding sources to supplement
26 governmental actions taken in support of transportation
27 projects, to the end that the financial and technical expertise
28 and other experience of private entities regarding the
29 development of transportation facilities may be garnered and
30 put into service on behalf of the state;

31 (5) That public and private entities should have a clear and
32 well-designed statutory framework to work within that allows
33 for flexibility in partnering with each other and developing
34 transportation infrastructure projects; and

35 (6) This article should not be limited by any rule of strict
36 construction, but should be liberally construed to effect the
37 legislative purpose of conceiving and creating a modern
38 transportation infrastructure under the leadership and guidance
39 of governmental entities, with corresponding and cooperative
40 assistance, under appropriate circumstances, by public-private
41 partnerships, inuring to the benefit and prosperity of the state
42 and the welfare of its citizens.

§17-28-3. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (1) "Affected local jurisdiction" means any county or
4 incorporated municipality of this state in which all or any part
5 of a transportation facility is or will be located, or any other
6 local public entity, including, but not limited to, a public

service district or highway authority or highway association that is directly affected by a transportation project.

(2) "Commissioner" means the Commissioner of Highways who is the chief executive officer of the Division of Highways.

(3) "Department" means the West Virginia Department of Transportation.

(4) "Division" refers to the Division of Highways, a division within the West Virginia Department of Transportation.

(5) "Governmental entity" means any county, municipality, or other governmental unit or political subdivision of the State.

(6) "Highway authority" or "highway association" means any entity created by the Legislature for the advancement and improvement of the state road and highway system, including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage Highway Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern Panhandle Transportation Authority or, if an authority is abolished, any entity succeeding to the principal functions of the highway authority or to whom the powers given to the highway authority are given by law.

(7) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity or other business entity.

(8) "Project costs" means capital costs, costs of financing, planning, designing, constructing, expanding, improving, maintaining or controlling a transportation facility, the cost of land, equipment, machinery, installation of utilities and other similar expenditures and all other charges or expenses necessary, appurtenant or incidental to the foregoing.

(9) "Sponsor" or "project sponsor" means a governmental entity proposing a transportation project.

(10) "Public-private partnership" means a consortium that includes the Division of Highways, a governmental entity, a highway authority or any combination thereof, together with a private entity or entities, which proposes to finance, acquire, plan, design, construct, expand, improve, maintain or control a transportation facility.

(11) "Public service district" means a public corporation or political subdivision of this state created pursuant to section two, article thirteen-a, chapter sixteen of this code.

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments or other service payments arising out of or in connection with supporting the development or operation of a transportation facility, including, without limitation, money received as grants or otherwise from the United States of America, from any public entity or from any agency or instrumentality of the foregoing in aid of such transportation project, moneys generated by way of contract, pledge, donation, bequest or bonds and moneys generated by taxes which are authorized to be assessed and levied by the Legislature or another governmental entity.

(13) "Secretary" means the Cabinet Secretary of the West Virginia Department of Transportation.

(14) "Transportation facility" means a public highway, road, bridge, tunnel, overpass, building, structure, airport,

vehicle parking facility, riverport facility, rail facility, or intermodal facility used for the transportation of persons or goods.

(15) "Transportation project" means any project to acquire, design, construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a transportation facility in this state for which a governmental entity is permitted by law to expend public funds but does not include any project that would otherwise be under the authority of the Public Port Authority, the Aeronautics Commission or the Parkways, Economic Development and Tourism Authority.

(16) "User fee" means a rate, toll, or fee imposed by an operator for use of all or a part of a transportation facility authorized in section five of this article.

(17) "Utility" means a privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including fire or police signal system or street lighting system, which directly or indirectly serves the public.

§17-28-4. Governmental entities to submit transportation project requests to commissioner of highways generally; commissioner's powers and duties to implement the act; transportation project plan requirements; Division of Highways plan review; proprietary information.

(a) In addition to any other powers which a governmental entity may now have, a governmental entity seeking state funds for a transportation project may submit a transportation project plan to the commissioner as a project sponsor. The

5 commissioner shall review the transportation project plan and
6 the available financing for the project and shall encourage
7 project sponsors to pursue alternative funding sources.
8 Alternative funding sources may include, without limitation,
9 utilization of tax increment financing, issuance of general
10 obligations bonds, special revenue bonds or anticipation notes,
11 cooperation with other governmental units, dedicated user fees
12 and public-private partnerships.

13 (b) To implement and carry out the intent of this article,
14 the commissioner shall propose legislative rules in accordance
15 with article three, chapter twenty-nine-a of this code. The
16 commissioner shall establish comprehensive, uniform
17 guidelines in order to evaluate any transportation project plan.
18 The guidelines shall address the following:

19 (1) The use of alternative sources of funding which could
20 finance all or a portion of the transportation project;

21 (2) The transportation needs of the region;

22 (3) Project costs;

23 (4) Whether dedicated revenues from a project sponsor are
24 offered for project costs;

25 (5) Available federal and state funds;

26 (6) The degree to which the transportation project impacts
27 other infrastructure projects and implements cost-effective and
28 efficient development of transportation projects with other
29 infrastructure improvements;

30 (7) The cost effectiveness of the transportation project as
31 compared with alternatives which achieve substantially the
32 same economic development benefits;

33 (8) The project sponsor's ability to operate and maintain
34 the transportation project or finance the continued operation
35 and maintenance of the transportation project if approved;

36 (9) The degree to which the transportation project achieves
37 other state or regional planning goals;

38 (10) The estimated date upon which the transportation
39 project could commence if funding were available and the
40 estimated completion date of the transportation project; and

41 (11) Other factors the commissioner considers necessary
42 or appropriate to accomplish the purpose and intent of this
43 article.

44 (c) The commissioner shall create a transportation project
45 plan application form that is to be used by project sponsors
46 requesting funding assistance from the state for transportation
47 projects. The application must require a preliminary proposal
48 that includes:

49 (1) The location of the transportation project and affected
50 local jurisdictions;

51 (2) The estimated total project cost of the transportation
52 project;

53 (3) The amount of funding assistance desired from the
54 Division of Highways and the specific uses of the funding;

55 (4) Other sources of funding available for the
56 transportation project;

57 (5) Information demonstrating the need for the
58 transportation project and documentation that the proposed
59 funding of the project is the most economically feasible
60 alternative to completing the transportation project;

(6) A timeline for activities to be performed by the project sponsors;

(7) A statement setting forth the financing of the project costs, including the sources of the funds and identification of any dedicated revenues, proposed debt, tax increment financing plans, issuance of bonds or notes, in-kind services or equity investment of project sponsors;

(8) A list of utilities that can be constructed in coordination with the transportation project and a statement of the plans to accommodate those utilities;

(9) Project sponsor contact information;

(10) A statement of the projected availability and use of dedicated revenues from user fees, lease payments, taxes, and other service payments over time; and

(11) Other information as the commissioner considers necessary to enable the review of the transportation project.

(12) The commissioner may also require the submission of geographic information system mapping of the transportation project and electronic filing of the preliminary proposal.

(d) If a preliminary proposal is approved by the commissioner for detailed review, the division will advise the project sponsors of the estimated cost of a detailed review. The project sponsor must deposit a bond with the commissioner, irrevocable letter of credit or other acceptable instrument guaranteeing payment by the project sponsors of the actual costs incurred by the division to perform a detailed transportation project plan review, to the maximum of the estimated costs, before a detailed review may begin.

(e) In evaluating any transportation project, the commissioner may rely upon internal staff reports or the advice of outside advisors or consultants.

(f) The commissioner is to encourage collaboration among project sponsors, affected local jurisdictions and private entities through intergovernmental agreements and public-private partnerships including, without limitation, recommending the amounts and sources of funding which affected local jurisdictions or project sponsors may pursue, which state transportation or infrastructure agency or agencies may be consulted for appropriate investment of public funds and alternatives to carry out the intent of this article.

(g) After a detailed review, the commissioner may recommend to the Governor those transportation projects which are a prudent and resourceful expenditure of public funds. No proposal may be recommended or approved which is inconsistent with the division's twenty-year long range plans or other transportation plans.

(h) The commissioner must prepare and publish an annual report of activities and accomplishments and submit it to the Governor and to the Joint Committee on Government and Finance on or before December 15 of each year. The commissioner must also prepare and submit an annual report to the Governor and the Legislature outlining alternative road funding models and incentive packages. The report may also recommend legislation relating to third-party donation of funds, materials or services, federal credit instruments, secured loans, federal Transportation Infrastructure Finance and Innovation Act funds, state infrastructure banks (SIBS), private activity bonds or other matters respecting transportation considered by the commissioner to be in the public interest. The commissioner may consider alternatives to the current system of taxing highway use through motor vehicle fuel taxes including, without limitation, pilot programs for testing technology and methods for the collection of mileage fees.

(i) All documents maintained pursuant to this article shall be subject to the requirements of chapter twenty-nine-b of this code.

§17-28-5. Powers conferred on counties; special charges for transportation facilities and projects; election on ordinance for user fees; form of ballots; procedure.

(a) In addition to any other powers which a county may now have, each county, by and through its county commission, shall have the following powers:

(1) To finance one or more transportation projects, or additions thereto, which shall be located within the county;

(2) To impose by ordinance reasonable user fees upon users of transportation facilities within a county to be collected in the manner specified in the ordinance, including, but not limited to, paying the costs of one or more transportation projects, the payment of debt service on any revenue bonds issued under section six of this article. The ordinance shall provide for the administration, collection and enforcement of the fee; and

(3) To establish a special transportation fund as a separate fund into which all user fees and other revenues designated by the county commission shall be deposited, and from which all transportation project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if special transportation revenue bonds are issued by the county commission under section six of this article.

(b) No ordinance imposing a user fee authorized by this section is effective until it is ratified by a majority of the legal votes cast by the qualified voters of the county at a primary or general election. The ballot question must set forth the amount of the fee, the manner in which it will be imposed, the

general use to which the proceeds of the fee will be put, a description of the transportation project to be financed with the fee, whether revenue bonds will be issued, and if bonds are to be issued, the estimated term and amount of the revenue bonds. The county commission may include additional information in the notice. Notice of the election shall be provided and the ballots shall be printed as set forth in subsection (c) of this section.

(c) On the election ballots shall be printed the following:

Shall the County Commission of (name of county) be authorized to adopt an ordinance to establish a fee for the use of the (transportation facility description) in accordance with section five, article twenty-eight, chapter seventeen of the code of West Virginia?

□ Yes

□ No

(d) If a majority of the legal votes cast upon the question be for the ordinance, the provisions of the ordinance become effective upon the date the results of the election are declared. If a majority of the legal votes cast upon the question be against the ordinance, the ordinance shall not take effect.

(e) Subject to the provisions of subsection (d) of this section, an election permitted by this section may be conducted at any regular primary or general election as the county commission in its order submitting the same to a vote may designate.

(f) Notice of an election pursuant to this section shall be given by publication of the order calling for a vote on the question as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this

code and the publication area for the publication shall be the county in which the election is to be conducted.

(g) Any election permitted by this section shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state applicable to primary or general elections not inconsistent with the provisions of this section shall apply to voting and elections authorized by this section.

(h) Before an election is held, the county commission shall obtain written confirmation from the commissioner approving the user fee and a transportation project plan within the county that was reviewed by commissioner under section four of this article.

§17-28-6. Issuance of transportation project revenue bonds by county.

(a) The county commission, in its discretion, may use the moneys in such special transportation fund established under section five of this article to finance the costs of transportation projects on a cash basis. Every county commission is empowered and authorized to issue, in the manner prescribed by this section, special revenue bonds secured by user fees authorized by section five of this article to finance or refinance all or part of a transportation project and pledge all or any part of the user fees for the payment of the principal of and interest on such bonds and the reserves therefor. Bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the word "transportation", in order to identify the same.

(b) The transportation revenue bonds may be authorized and issued by the county commission to finance or refinance, in whole or in part, public transportation projects in an aggregate principal amount not exceeding the amount which

the county commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from user fee revenues. A county commission issuing transportation revenue bonds shall establish a fund to deposit user fee revenues. The county commission shall thereafter deposit all revenues pledged to the payment of principal and interest of transportation revenue bonds into the fund.

(c) The issuance of transportation revenue bonds may be authorized by an order of the county commission. The transportation revenue bonds shall: (1) Bear a date or dates; (2) mature at a time or times not exceeding forty years from their respective dates; (3) be in a denomination not more than a maximum denomination fixed by the county commission; (4) be in a registered form with exchangeability and interchangeability privileges; (5) be payable in a medium of payment and at a place or places within or without the state; (6) be subject to such terms and prices for redemption, if any, as approved by the county commission; (7) bear a rate of interest that is not more than a maximum rate fixed by the county commission; and (8) may have such other terms and provisions as determined by the county commission. The transportation revenue bonds shall be signed by the president of the county commission under the seal of the county commission, attested by the clerk of the county commission. Transportation revenue bonds may be sold in a manner as the county commission determines is for the best interests of the county.

(d) The county commission may enter into: (1) Trust agreements with banks or trust companies within or without the state and in trust agreements or orders authorizing the issuance of bonds; (2) valid and legally binding covenants with the holders of the transportation revenue bonds as to the custody, safeguarding and disposition of the proceeds of the transportation revenue bonds, the moneys in the user fee revenue fund, sinking funds, reserve funds or any other

53 moneys or funds; as to the rank and priority, if any, or
54 different issues of transportation revenue bonds by the county
55 commission under the provisions of this section; (3)
56 agreements as to such provisions as payment, term, security,
57 default and remedy provisions as the county commission shall
58 consider necessary or desirable; and (4) agreements as to any
59 other matters or provisions which are considered necessary
60 and advisable by the county commission in the best interests
61 of the county and to enhance the marketability of such
62 transportation revenue bonds.

63 (e) The transportation revenue bonds are negotiable
64 instruments under the Uniform Commercial Code of this state
65 and are not obligations or debts of the state or of the county
66 issuing the bonds and the credit or taxing power of the state or
67 county may not be pledged therefor, but the transportation
68 revenue bonds may be payable only from the revenue pledged
69 therefor as provided in this article.

70 (f) A holder of transportation revenue bonds has a lien
71 against the user fee revenues and the user fee revenue fund for
72 payment of the transportation revenue bond and the interest
73 thereon and may bring suit to enforce the lien.

74 (g) A county commission may issue and secure additional
75 bonds payable out of the user fee revenues and the user fee
76 revenue fund which bonds may rank on a parity with, or be
77 subordinate or superior to, other bonds issued by the county
78 commission and payable from the user revenue fee fund.

79 (h) For the purposes of this section, a county commission
80 is authorized to sue and be sued; make contracts and
81 guarantees; incur liabilities; borrow or lend money for any
82 time period considered advisable by the county commission;
83 sell, mortgage, lease, exchange, transfer or otherwise dispose
84 of its property; or pledge its property as collateral or security
85 for any time period considered advisable by the commission.

All sales, leases or other disposition of real property acquired with state road funds or federal funds, or of real property dedicated to the state road system, must be done in accordance with applicable federal and state law and may be done only with the approval of the commissioner. A county commission is also authorized to create trusts as will expedite the efficient management of transportation projects and other assets owned or controlled by the county commission. The trustee, whether individual or corporate, in any trust has a fiduciary relationship with the county commission and may be removed by the county commission for good cause shown or for a breach of the fiduciary relationship with the county commission. Nothing in this article effects a waiver of the sovereign, constitutional or governmental immunity of the state or its agencies.

(i) The powers conferred by this article are in addition and supplemental to any other powers conferred upon county commissions by the Legislature relating to streets, road maintenance or to construct and maintain transportation facilities.

(j) After the issuance of any transportation revenue bonds, the user fee pledged to the payment thereof may not be reduced as long as any of the bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the order, trust, agreement or other proceedings under which the transportation revenue bonds were issued.

§17-28-7. Comprehensive agreement.

(a) Prior to acquiring, constructing or improving a transportation facility, the project sponsors shall enter into a comprehensive agreement with the division. The comprehensive agreement shall provide for:

(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the transportation facility, in the forms and amounts satisfactory to the division;

(2) Review and approval of the final plans and specifications for the transportation facility by the division;

(3) Inspection of the construction of or improvements to the transportation facility to ensure that they conform to the engineering standards acceptable to the division;

(4) Maintenance of a policy or policies of public liability insurance or self-insurance, in a form and amount satisfactory to the division and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the transportation facility. However, in no event may the insurance impose any pecuniary liability on the state, its agencies or any political subdivision of the state. Copies of the policies must be filed with the division accompanied by proofs of coverage;

(5) Monitoring of the maintenance and operating practices of the sponsoring governmental entity by the division and the taking of any actions the division finds appropriate to ensure that the transportation facility is properly maintained and operated;

(6) Itemization and reimbursement to be paid to the division for the review and any services provided by the division;

(7) Filing of appropriate financial statements on a periodic basis;

(8) The date of termination of the sponsoring governmental entity's duties under this article and dedication to the division; and

(9) That a transportation facility must accommodate all public utilities on a reasonable, nondiscriminatory and completely neutral basis and in compliance with section seventeen-b, article four, chapter seventeen of this code.

(b) In the comprehensive agreement, the division may agree to accept grants or loans from the sponsoring governmental entity, from time to time, from amounts received from the state or federal government or any agency or instrumentality of the state or federal government.

(c) The comprehensive agreement is to incorporate the duties of the sponsoring governmental entity under this article and may contain any other terms and conditions that the division determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the division agrees to provide notice of default and cure rights for the benefit of the sponsoring governmental entity and the persons specified in the comprehensive agreement as providing financing for the qualifying transportation facility. The comprehensive agreement may contain any other lawful terms and conditions to which the sponsoring governmental entity and the division mutually agree.

(d) Any changes in the terms of the comprehensive agreement, agreed upon by the parties must be added to the comprehensive agreement by written amendment.

§17-28-8. Commissioner's authority over transportation projects accepted into the state road system; use of state road funds.

(a) Notwithstanding anything in this article to the contrary, the commissioner has final approval of any transportation project. However, no state road funds may be used, singly or

4 together with funds from any other source, for any purpose or
5 in any manner contrary to or prohibited by the constitution and
6 laws of this state or the federal government or where such use,
7 in the sole discretion of the commissioner, would jeopardize
8 receipt of federal funds.

9 (b) All transportation projects that are accepted as part of
10 the state road system, and all real property interests and
11 appurtenances, are under the exclusive jurisdiction and control
12 of the commissioner, who may exercise the same rights and
13 authority as he or she has over other transportation facilities in
14 the state road system. As a condition of acceptance of a
15 transportation project into the state road system, the
16 commissioner may require that the project sponsor provide a
17 dedicated revenue source for the continued operation and
18 maintenance of the transportation project.

19 (c) No state road funds may be used to finance a
20 transportation project without the written approval of the
21 commissioner.

§17-28-9. Qualifying a transportation project as a public improvement.

1 All transportation projects authorized under this article are
2 public improvements and are subject to article five-a, chapter
3 twenty-one of this code. Article twenty-two, chapter five of
4 this code applies to all transportation projects authorized under
5 this article. All construction, reconstruction, repair or
6 improvement of transportation projects under this article will
7 be awarded by competitive bidding. Competitive bids are to
8 be solicited by the governmental entity sponsoring a
9 transportation project for each construction contract in excess
10 of $25,000 in total cost. Competitive bids must be solicited by
11 the sponsoring governmental entity through publication of a
12 Class II legal advertisement, as required by article three,
13 chapter fifty-nine of this code, and the publication area is the

14 county or municipality where the transportation facility is to
15 be located. The advertisement must also be published as a
16 Class II advertisement in a newspaper of general circulation
17 published in the city of Charleston. The advertisement is to
18 include the solicitations of sealed proposals for the
19 construction of the transportation project, stating the time and
20 place for the opening of bids. All bids will be publicly opened
21 and read aloud. Construction contracts must be awarded to
22 the lowest qualified responsible bidder, who furnishes a
23 sufficient performance or payment bond. The sponsoring
24 governmental entity has the right to reject all bids and solicit
25 new bids for the construction contract. Article one-c, chapter
26 twenty-one of this code applies to the construction of all
27 transportation projects approved under this article.

§17-28-10. Coordination and development of transportation projects with other infrastructure; information sharing; agreements among municipal utilities and public service districts to participate in transportation projects; rates to include costs borne by municipal utilities and public service districts in coordination with transportation projects; exemption from Public Service Commission approval.

1 (a) The commissioner is to encourage the joint and
2 concurrent development and construction of transportation
3 projects with other infrastructure including, without limitation,
4 water and sewer infrastructure.

5 (b) To coordinate and integrate the planning of
6 transportation projects among local jurisdictions, all governing
7 bodies, units of government, municipal utilities and public
8 service districts within the affected local jurisdiction are to
9 cooperate, participate, share information and give input when
10 a project sponsor prepares a transportation project plan.

(c) Municipal utilities and public service districts may enter into agreements with any project sponsor for the purpose of constructing new infrastructure facilities or substantially improving or expanding infrastructure facilities in conjunction with a transportation project and dedicating revenue or contributing moneys to transportation project costs. Each agreement must contain, at a minimum, engineering and construction standards, terms regarding the revenue sources, allocation of project costs and confirmation that the agreement does not violate any existing bond covenants. Each agreement shall also comply and be consistent with the comprehensive agreement applicable to the transportation project. No infrastructure facilities may be located or relocated within a right-of-way in, or to be included within, the state road system except in accordance with transportation project plans approved by the commissioner.

(d) The rates charged by a municipal utility or public service district to customers in an affected local jurisdiction may include the additional cost borne by the municipal utility or public service district as a result of entering into an agreement with a project sponsor to contribute moneys or dedicate revenue to transportation project costs.

(e) This article may not be construed to affect the authority of the Department of Environmental Protection nor the authority of the Department of Health and Human Resources pursuant to this code.

(f) This article may not be construed to give the Public Service Commission authority to regulate or intervene in the approval and construction of any transportation project or any agreement between a project sponsor and a municipal utility or public service district under this article.

§17-28-11. Excess funds; termination of user fee.

(a) When revenue bonds have been issued as provided in this article and the amount of user fees imposed pursuant to section five of this article and collected, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the finding of required debt service and maintenance reserves, the additional amount shall be set aside in a separate fund and used to either fund transportation projects on a cash basis or retire some or all of the outstanding revenue bonds before their maturity date. The county commission may establish a call date for which bonds must be refunded with excess funds after a date determined by the county commission.

(b) Once the revenue bonds issued as provided in this article are no longer outstanding or a certified public accountant certifies that sufficient reserves have been or will be accumulated as of a specified date to pay all future debt service on the outstanding bonds, the user fee that is applicable to those specific bonds shall be discontinued. Termination of the user fee as provided in this section shall not bar or otherwise prevent the county commission from collecting user fees that accrued before the termination date.

§17-28-12. Severability.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

CHAPTER 200

(Com. Sub. for H. B. 4504 - By Delegates Iaquinta and Swartzmiller)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §15-1E-1, §15-1E-2, §15-1E-3, §15-1E-4, §15-1E-5, §15-1E-6, §15-1E-7, §15-1E-8, §15-1E-9, §15-1E-10, §15-1E-11, §15-1E-12, §15-1E-13, §15-1E-14, §15-1E-15, §15-1E-16, §15-1E-17, §15-1E-18, §15-1E-19, §15-1E-20, §15-1E-21, §15-1E-22, §15-1E-23, §15-1E-24, §15-1E-25, §15-1E-26, §15-1E-27, §15-1E-28, §15-1E-29, §15-1E-30, §15-1E-31, §15-1E-32, §15-1E-33, §15-1E-34, §15-1E-35, §15-1E-36, §15-1E-37, §15-1E-38, §15-1E-39, §15-1E-40, §15-1E-41, §15-1E-42, §15-1E-43, §15-1E-44, §15-1E-45, §15-1E-46, §15-1E-47, §15-1E-48, §15-1E-49, §15-1E-50, §15-1E-51, §15-1E-52, §15-1E-53, §15-1E-54, §15-1E-55, §15-1E-56, §15-1E-57, §15-1E-58, §15-1E-59, §15-1E-60, §15-1E-61, §15-1E-62, §15-1E-63, §15-1E-64, §15-1E-65, §15-1E-66, §15-1E-67, §15-1E-68, §15-1E-69, §15-1E-70, §15-1E-71, §15-1E-72, §15-1E-73, §15-1E-74, §15-1E-75, §15-1E-76, §15-1E-77, §15-1E-78, §15-1E-79, §15-1E-80, §15-1E-81, §15-1E-82, §15-1E-83, §15-1E-84, §15-1E-85, §15-1E-86, §15-1E-87, §15-1E-88, §15-1E-89, §15-1E-90, §15-1E-91, §15-1E-92, §15-1E-93, §15-1E-94, §15-1E-95, §15-1E-96, §15-1E-97, §15-1E-98, §15-1E-99, §15-1E-100, §15-1E-101, §15-1E-102, §15-1E-103, §15-1E-104, §15-1E-105, §15-1E-106, §15-1E-107, §15-1E-108, §15-1E-109, §15-1E-110, §15-1E-111, §15-1E-112, §15-1E-113, §15-1E-114, §15-1E-115, §15-1E-116, §15-1E-117, §15-1E-

118, §15-1E-119, §15-1E-120, §15-1E-121, §15-1E-122, §15-1E-123, §15-1E-124, §15-1E-125, §15-1E-126, §15-1E-127, §15-1E-128, §15-1E-129, §15-1E-130, §15-1E-131, §15-1E-132, §15-1E-133, §15-1E-134, §15-1E-135, §15-1E-136, §15-1E-137 and §15-1E-138, of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto eighteen new sections, designated §15-1E-50a, §15-1E-57a, §15-1E-58a, §15-1E-58b, §15-1E-67a, §15-1E-76a, §15-1E-76b, §15-1E-112a, §15-1E-139, §15-1E-140, §15-1E-141, §15-1E-142, §15-1E-143, §15-1E-144, §15-1E-145, §15-1E-146, §15-1E-147 and §15-1E-148, all relating to adopting the Uniform State Military Code of Justice; defining terms; designating persons subject to this code and jurisdiction; noting the territorial applicability of the code; detailing apprehension and restraint procedures; establishing nonjudicial punishment authority; stating court-martial jurisdiction; prescribing appointment and composition of courts-martial; describing pretrial and trial procedure; specifying sentences after conviction; delineating post-trial procedure and review of courts-martial; establishing punitive articles; and creating miscellaneous provisions.

Be it enacted by the Legislature of West Virginia:

That §15-1E-1, §15-1E-2, §15-1E-3, §15-1E-4, §15-1E-5, §15-1E-6, §15-1E-7, §15-1E-8, §15-1E-9, §15-1E-10, §15-1E-11, §15-1E-12, §15-1E-13, §15-1E-14, §15-1E-15, §15-1E-16, §15-1E-17, §15-1E-18, §15-1E-19, §15-1E-20, §15-1E-21, §15-1E-22, §15-1E-23, §15-1E-24, §15-1E-25, §15-1E-26, §15-1E-27, §15-1E-28, §15-1E-29, §15-1E-30, §15-1E-31, §15-1E-32, §15-1E-33, §15-1E-34, §15-1E-35, §15-1E-36, §15-1E-37, §15-1E-38, §15-1E-39, §15-1E-40, §15-1E-41, §15-1E-42, §15-1E-43, §15-1E-44, §15-1E-45, §15-1E-46, §15-1E-47, §15-1E-48, §15-1E-49, §15-1E-50, §15-1E-51, §15-1E-52, §15-1E-53, §15-1E-54, §15-1E-55, §15-1E-56, §15-1E-57, §15-1E-58, §15-1E-59, §15-1E-60, §15-1E-61, §15-1E-62, §15-1E-63, §15-1E-64, §15-1E-65, §15-1E-66, §15-1E-67, §15-1E-68, §15-1E-69, §15-1E-70, §15-1E-71, §15-1E-72, §15-1E-73, §15-1E-74, §15-1E-75, §15-1E-76, §15-1E-77, §15-1E-78, §15-1E-79, §15-

1E-80, §15-1E-81, §15-1E-82, §15-1E-83, §15-1E-84, §15-1E-85, §15-1E-86, §15-1E-87, §15-1E-88, §15-1E-89, §15-1E-90, §15-1E-91, §15-1E-92, §15-1E-93, §15-1E-94, §15-1E-95, §15-1E-96, §15-1E-97, §15-1E-98, §15-1E-99, §15-1E-100, §15-1E-101, §15-1E-102, §15-1E-103, §15-1E-104, §15-1E-105, §15-1E-106, §15-1E-107, §15-1E-108, §15-1E-109, §15-1E-110, §15-1E-111, §15-1E-112, §15-1E-113, §15-1E-114, §15-1E-115, §15-1E-116, §15-1E-117, §15-1E-118, §15-1E-119, §15-1E-120, §15-1E-121, §15-1E-122, §15-1E-123, §15-1E-124, §15-1E-125, §15-1E-126, §15-1E-127, §15-1E-128, §15-1E-129, §15-1E-130, §15-1E-131, §15-1E-132, §15-1E-133, §15-1E-134, §15-1E-135, §15-1E-136, §15-1E-137 and §15-1E-138, of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto eighteen new sections, designated §15-1E-50a, §15-1E-57a, §15-1E-58a, §15-1E-58b, §15-1E-67a, §15-1E-76a, §15-1E-76b, §15-1E-112a, §15-1E-139, §15-1E-140, §15-1E-141, §15-1E-142, §15-1E-143, §15-1E-144, §15-1E-145, §15-1E-146, §15-1E-147 and §15-1E-148, all to read as follows:

ARTICLE 1E. UNIFORM STATE CODE OF MILITARY JUSTICE.

§15-1E-1. Definitions; gender neutrality.
§15-1E-2. Persons subject to this article; jurisdiction.
§15-1E-3. Jurisdiction to try certain personnel.
§15-1E-4. Reserved.
§15-1E-5. Territorial applicability of the article.
§15-1E-6. Judge Advocates.
§15-1E-7. Apprehension.
§15-1E-8. Reserved.
§15-1E-9. Imposition of restraint.
§15-1E-10. Restraint of persons charged with offenses.
§15-1E-11. Place of confinement; reports and receiving of prisoners.
§15-1E-12. Confinement with enemy prisoners prohibited.
§15-1E-13. Punishment prohibited before trial.
§15-1E-14. Delivery of offenders to civil authorities.
§15-1E-15. Commanding officer's nonjudicial punishment.
§15-1E-16. Courts-martial classified.
§15-1E-17. Jurisdiction of courts-martial in general.
§15-1E-18. Jurisdiction of general courts-martial.
§15-1E-19. Jurisdiction of special courts-martial.
§15-1E-20. Jurisdiction of summary courts-martial.
§15-1E-21. Reserved.

§15-1E-22. Who may convene general courts-martial.
§15-1E-23. Who may convene special courts-martial.
§15-1E-24. Who may convene summary courts-martial.
§15-1E-25. Who may serve on courts-martial.
§15-1E-26. Military judge of a general or special court-martial.
§15-1E-27. Detail of trial counsel and defense counsel.
§15-1E-28. Detail or employment of reporters and interpreters.
§15-1E-29. Absent and additional members.
§15-1E-30. Charges and specifications.
§15-1E-31. Compulsory self-incrimination prohibited.
§15-1E-32. Investigation.
§15-1E-33. Forwarding of charges.
§15-1E-34. Advice of judge advocate and reference for trial.
§15-1E-35. Service of charges.
§15-1E-36. Governor or the Adjutant General may prescribe rules.
§15-1E-37. Unlawfully influencing action of court.
§15-1E-38. Duties of trial counsel and defense counsel.
§15-1E-39. Sessions.
§15-1E-40. Continuances.
§15-1E-41. Challenges.
§15-1E-42. Oaths or affirmations.
§15-1E-43. Statute of limitations.
§15-1E-44. Former jeopardy.
§15-1E-45. Pleas of the accused.
§15-1E-46. Opportunity to obtain witnesses and other evidence.
§15-1E-47. Refusal to appear or testify.
§15-1E-48. Contempts.
§15-1E-49. Depositions.
§15-1E-50. Admissibility of records of courts of inquiry.
§15-1E-50a. Defense of lack of mental responsibility.
§15-1E-51. Voting and rulings.
§15-1E-52. Number of votes required.
§15-1E-53. Court to announce action.
§15-1E-54. Record of trial.
§15-1E-55. Cruel and unusual punishments prohibited.
§15-1E-56. Maximum limits.
§15-1E-57. Effective date of sentences.
§15-1E-57a. Deferment of sentences.
§15-1E-58. Execution of confinement.
§15-1E-58a. Sentences: reduction in enlisted grade upon approval.
§15-1E-58b. Sentences: forfeiture of pay and allowances during confinement.
§15-1E-59. Error of law; lesser included offense.
§15-1E-60. Action by the convening authority.
§15-1E-61. Withdrawal of appeal.
§15-1E-62. Appeal by the state.
§15-1E-63. Rehearings.
§15-1E-64. Review by the senior force judge advocate.
§15-1E-65. Disposition of records after review by the convening authority.
§15-1E-66. Reserved.
§15-1E-67. Reserved.
§15-1E-67a. Review by State Appellate Authority.

§15-1E-68. Reserved.
§15-1E-69. Reserved.
§15-1E-70. Appellate counsel.
§15-1E-71. Execution of sentence; suspension of sentence.
§15-1E-72. Vacation of suspension.
§15-1E-73. Petition for new trial.
§15-1E-74. Remission and suspension.
§15-1E-75. Restoration.
§15-1E-76. Finality of proceeding, findings, and sentences.
§15-1E-76a. Leave required to be taken pending review of certain court-martial convictions.
§15-1E-76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.
§15-1E-77. Principals.
§15-1E-78. Accessory after the fact.
§15-1E-79. Conviction of lesser included offense.
§15-1E-80. Attempts.
§15-1E-81. Conspiracy.
§15-1E-82. Solicitation.
§15-1E-83. Fraudulent enlistment, appointment, or separation.
§15-1E-84. Unlawful enlistment, appointment, or separation.
§15-1E-85. Desertion.
§15-1E-86. Absence without leave.
§15-1E-87. Missing movement.
§15-1E-88. Contempt toward officials.
§15-1E-89. Disrespect toward superior commissioned officer.
§15-1E-90. Assaulting or willfully disobeying superior commissioned officer.
§15-1E-91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
§15-1E-92. Failure to obey order or regulation.
§15-1E-93. Cruelty and maltreatment.
§15-1E-94. Mutiny or sedition.
§15-1E-95. Resistance, flight, breach of arrest, and escape.
§15-1E-96. Releasing prisoner without proper authority.
§15-1E-97. Unlawful detention.
§15-1E-98. Noncompliance with procedural rules.
§15-1E-99. Misbehavior before the enemy.
§15-1E-100. Subordinate compelling surrender.
§15-1E-101. Improper use of countersign.
§15-1E-102. Forcing a safeguard.
§15-1E-103. Captured or abandoned property.
§15-1E-104. Aiding the enemy.
§15-1E-105. Misconduct as prisoner.
§15-1E-106. Reserved.
§15-1E-107. False official statements.
§15-1E-108. Military property - Loss, damage, destruction, or wrongful disposition.
§15-1E-109. Property other than military property - Waste, spoilage, or destruction.
§15-1E-110. Improper hazarding of vessel.
§15-1E-111. Reserved.
§15-1E-112. Drunk on duty.
§15-1E-112a. Wrongful use, possession, etc, of controlled substance.
§15-1E-113. Misbehavior of sentinel.

§15-1E-114. Dueling.
§15-1E-115. Malingering.
§15-1E-116. Riot or breach of peace.
§15-1E-117. Provoking speeches or gestures.
§15-1E-118. Reserved.
§15-1E-119. Reserved.
§15-1E-120. Reserved.
§15-1E-121. Reserved.
§15-1E-122. Reserved.
§15-1E-123. Reserved.
§15-1E-124. Reserved.
§15-1E-125. Reserved.
§15-1E-126. Reserved.
§15-1E-127. Reserved.
§15-1E-128. Reserved.
§15-1E-129. Reserved.
§15-1E-130. Reserved.
§15-1E-131. Reserved.
§15-1E-132. Frauds against the government.
§15-1E-133. Conduct unbecoming an officer and a gentleman.
§15-1E-134. General article.
§15-1E-135. Courts of inquiry.
§15-1E-136. Authority to administer oaths and to act as notary.
§15-1E-137. Articles to be explained.
§15-1E-138. Complaints.
§15-1E-139. Redress of injuries to property.
§15-1E-140. Delegation by the Governor.
§15-1E-141. Payment of fees, costs and expenses.
§15-1E-142. Payment of fines and disposition thereof.
§15-1E-143. Uniformity of interpretation.
§15-1E-144. Immunity for action of military courts.
§15-1E-145. Reserved.
§15-1E-146. Short title.
§15-1E-147. Time of taking effect.
§15-1E-148. Supersedes existing state military justice codes.

PART I. GENERAL PROVISIONS.

§15-1E-1. Definitions; gender neutrality.

1 (a) In this article, unless the context otherwise requires:

2 (1) The term "accuser" means a person who signs and
3 swears to charges, any person who directs that charges
4 nominally be signed and sworn to by another, and any other
5 person who has an interest other than an official interest in
6 the prosecution of the accused.

7 (2) The term "cadet," "candidate," or "midshipman"
8 means a person who is enrolled in or attending a state
9 military academy, a regional training institute, or any other
10 formal education program for the purpose of becoming a
11 commissioned officer in the state military forces.

12 (3) The term "classified information" means - any
13 information or material that has been determined by an
14 official of the United States or any state pursuant to law, an
15 Executive order, or regulation to require protection against
16 unauthorized disclosure for reasons of national or state
17 security, and any restricted data, as defined in section 11(y)
18 of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(y)).

19 (4) The term "code" means this article.

20 (5) The term "commanding officer" includes only
21 commissioned officers of the state military forces and shall
22 include officers in charge only when administering
23 nonjudicial punishment under Section fifteen of this article.
24 The term "commander" has the same meaning as
25 "commanding officer" unless the context otherwise requires.

26 (6) The term "convening authority" includes, in addition
27 to the person who convened the court, a commissioned
28 officer commanding for the time being or a successor in
29 command to the convening authority.

30 (7) The term "day" means calendar day and is not
31 synonymous with the term "unit training assembly." Any
32 punishment authorized by this section which is measured in
33 terms of days shall, when served in a status other than annual
34 field training, be construed to mean succeeding duty days.

35 (8) The term "duty status other than state active duty"
36 means any other type of duty not in federal service and not
37 full-time duty in the active service of the state; under an

38 order issued by authority of law and includes travel to and
39 from such duty.

40 (9) The term "enlisted member" means a person in an
41 enlisted grade.

42 (10) The term "judge advocate" means a commissioned
43 officer of the organized state military forces who is an
44 attorney licensed to practice in this state or is a member in
45 good standing of the bar of the highest court of another state,
46 who is admitted pro hac vice to practice in this state, and is
47 any of the following: Certified or designated as a judge
48 advocate in the Judge Advocate General's Corps of the
49 Army, Air Force, Navy, or the Marine Corps or designated as
50 a law specialist as an officer of the Coast Guard, or a reserve
51 component of one of these; or certified as an nonfederally
52 recognized judge advocate, under regulations promulgated
53 pursuant to this provision, by the senior judge advocate of the
54 commander of the force in the state military forces of which
55 the accused is a member, as competent to perform such
56 military justice duties required by this article. If there is no
57 such judge advocate available, then such certification may be
58 made by such senior judge advocate of the commander of
59 another force in the state military forces, as the convening
60 authority directs.

61 (11) The term "may" is used in a permissive sense. The
62 phrase "no person may . . ." means that no person is required,
63 authorized, or permitted to do the act prescribed.

64 (12) The term "military court" means a court-martial or
65 a court of inquiry.

66 (13) The term "military judge" means an official of a
67 general or special court-martial detailed in accordance with
68 section twenty-six of this article.

69 (14) The term "military offenses" means those offenses
70 prescribed under sections seventy-seven (Principals), seventy-
71 eight (Accessory after the fact), eighty (Attempts), eighty-one
72 (Conspiracy), eighty-two (Solicitation),eighty-three (Fraudulent
73 enlistment, appointment, or separation), eighty-four (Unlawful
74 enlistment, appointment, or separation), eighty-five (Desertion),
75 eighty-six (Absence without leave), eighty-seven (Missing
76 movement), eighty-eight (Contempt toward officials), eighty-
77 nine (Disrespect towards superior commissioned officer), ninety
78 (Assaulting or willfully disobeying superior commissioned
79 officer), ninety-one (Insubordinate conduct toward warrant
80 officer, noncommissioned officer, or petty officer), ninety-two
81 (Failure to obey order or regulation), ninety-three (Cruelty and
82 maltreatment), ninety-four (Mutiny or sedition), ninety-five
83 (Resistance, flight, breach of arrest, and escape), ninety-six
84 (Releasing prisoner without proper authority), ninety-seven
85 (Unlawful detention), ninety-eight (Noncompliance with
86 procedural rules), ninety-nine (Misbehavior before the enemy),
87 one hundred (Subordinate compelling surrender), one hundred
88 one (Improper use of countersign), one hundred two (Forcing a
89 safeguard), one hundred three (Captured or abandoned
90 property), one hundred four (Aiding the enemy), one hundred
91 five (Misconduct as prisoner), one hundred seven (False official
92 statements), one hundred eight (Military property - Loss,
93 damage, destruction, or wrongful disposition), one hundred nine
94 (Property other than military property - waste, spoilage, or
95 destruction), one hundred ten (Improper hazarding of vessel),
96 one hundred twelve (Drunk on duty), one hundred twelve-a.
97 (Wrongful use, possession, etc, of controlled substances), one
98 hundred thirteen (Misbehavior of sentinel), one hundred
99 fourteen (Dueling), one hundred fifteen (Malingering), one
100 hundred sixteen (Riot or breach of peace), one hundred
101 seventeen (Provoking speeches or gestures), one hundred thirty-
102 two (Frauds against the government), one hundred thirty-three
103 (Conduct unbecoming an officer and a gentleman), and one
104 hundred thirty-four (General) of this article.

105 (15) The term "national security" means the national
106 defense and foreign relations of the United States.

107 (16) The term "officer" means a commissioned or
108 warrant officer.

109 (17) The term "officer in charge" means a member of the
110 Naval Militia, the Navy, the Marine Corps, or the Coast
111 Guard designated as such by appropriate authority.

112 (18) The term "record," when used in connection with the
113 proceedings of a court-martial, means - an official written
114 transcript, written summary, or other writing relating to the
115 proceedings; or an official audiotape, videotape, digital
116 image or file, or similar material from which sound, or sound
117 and visual images, depicting the proceedings may be
118 reproduced.

119 (19) "Shall" is used in an imperative sense.

120 (20) "State" means one of the several states, the District
121 of Columbia, the Commonwealth of Puerto Rico, Guam, and
122 the U.S. Virgin Islands.

123 (21) "State active duty" means full-time duty in the state
124 military forces under an order of the Governor or otherwise
125 issued by authority of law, and paid by state funds, and
126 includes travel to and from such duty.

127 (22) "Senior force judge advocate" means the senior
128 judge advocate of the commander of the same force of the
129 state military forces as the accused and who is that
130 commander's chief legal advisor. To be eligible to serve as
131 a senior force judge advocate, a judge advocate must be a
132 member of the bar of the Supreme Court of Appeals of West
133 Virginia for at least five years, and shall have completed all
134 educational requirements for active military service as a field
135 grade judge advocate general corps officer.

(23) "State military forces" means the National Guard of the state, as defined in title 32, United States Code, to include the West Virginia Army National Guard, the West Virginia Air National Guard and the inactive National Guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members, when not in a status subjecting them to exclusive jurisdiction under chapter 47 of title 10, United States Code.

(24) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(25) "Senior force commander" means the commander of the same force of the state military forces as the accused.

(26) "Unit Training Assembly" means an assembly for drill or instruction which may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the commander, a series of ordered formations of those organizations.

(b) The use of the masculine gender throughout this shall also include the feminine gender.

§15-1E-2. Persons subject to this article; jurisdiction.

(a) This article applies to all members of the state military forces at all times.

(b) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force. Courts-martial have primary jurisdiction of military offenses as defined in this article. A proper civilian court has primary jurisdiction of a nonmilitary offense when an act or omission violates both this article and local criminal law, foreign or domestic. In such a case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided

12 jeopardy has not attached. Jurisdiction over attempted
13 crimes, conspiracy crimes, solicitation, and accessory crimes
14 must be determined by the underlying offense.

§15-1E-3. Jurisdiction to try certain personnel.

1 (a) Each person discharged from the state military forces
2 who is later charged with having fraudulently obtained a
3 discharge is, subject to section forty-three of this article,
4 subject to trial by court-martial on that charge and is, after
5 apprehension, subject to this article while in custody under
6 the direction of the state military forces for that trial. Upon
7 conviction of that charge that person is subject to trial by
8 court-martial for all offenses under this article committed
9 before the fraudulent discharge.

10 (b) No person who has deserted from the state military
11 forces may be relieved from amenability to the jurisdiction of
12 this article by virtue of a separation from any later period of
13 service.

§15-1E-4. Reserved.

§15-1E-5. Territorial applicability of the article.

1 (a) This article has applicability at all times and in all
2 places, provided that either the person subject to the article is
3 in a duty status or, if not in a duty status, that there is a nexus
4 between the act or omission constituting the offense and the
5 efficient functioning of the state military forces; however,
6 this grant of military jurisdiction shall neither preclude nor
7 limit civilian jurisdiction over an offense, which is limited
8 only by the prohibition of double jeopardy.

9 (b) Courts-martial and courts of inquiry may be convened
10 and held in units of the state military forces while those units
11 are serving outside the state with the same jurisdiction and

powers as to persons subject to this article as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

§15-1E-6. Judge Advocates.

(a) The senior force judge advocates in each of the state's military forces or that judge advocate's delegates shall make frequent inspections in the field in supervision of the administration of military justice in that force.

(b) Convening authorities shall at all times communicate directly with their judge advocates in matters relating to the administration of military justice. The judge advocate of any command is entitled to communicate directly with the judge advocate of a superior or subordinate command, or with the State Judge Advocate.

(c) No person who has acted as member, military judge, trial counsel, defense counsel, or investigating officer, or who has been a witness, in any case may later act as a judge advocate to any reviewing authority upon the same case.

PART II. APPREHENSION AND RESTRAINT.

§15-1E-7. Apprehension.

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this article or by chapter 47 of title 10, United States Code, or by regulations issued under either, to apprehend persons subject to this article, any marshal of a court-martial appointed pursuant to the provisions of this article, and any peace officer or civil officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon

9 probable cause that an offense has been committed and that
10 the person apprehended committed it.

11 (c) Commissioned officers, warrant officers, petty
12 officers, and noncommissioned officers have authority to
13 quell quarrels, frays, and disorders among persons subject to
14 this article and to apprehend persons subject to this article
15 who take part therein.

16 (d) If an offender is apprehended outside the state, the
17 offender's return to the area must be in accordance with
18 normal extradition procedures or by reciprocal agreement.

19 (e) No person authorized by this section to apprehend
20 persons subject to this article or the place where such
21 offender is confined, restrained, held, or otherwise housed
22 may require payment of any fee or charge for so receiving,
23 apprehending, confining, restraining, holding, or otherwise
24 housing a person except as otherwise provided by law.

§15-1E-8. Reserved.

§15-1E-9. Imposition of restraint.

1 (a) Arrest is the restraint of a person by an order, not
2 imposed as a punishment for an offense, directing him or her
3 to remain within certain specified limits. Confinement is the
4 physical restraint of a person.

5 (b) An enlisted member may be ordered into arrest or
6 confinement by any commissioned officer by an order, oral
7 or written, delivered in person or through other persons
8 subject to this article. A commanding officer may authorize
9 warrant officers, petty officers, or noncommissioned officers
10 to order enlisted members of the commanding officer's
11 command or subject to the commanding officer's authority
12 into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this article or to trial there under may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

§15-1E-10. Restraint of persons charged with offenses.

Any person subject to this article charged with an offense under this article may be ordered into arrest or confinement, as circumstances may require. When any person subject to this article is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.

§15-1E-11. Place of confinement; reports and receiving of prisoners.

(a) If a person subject to this article is confined before, during, or after trial, confinement shall be in a civilian or military confinement facility.

(b) No person authorized to receive prisoners pursuant to section may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a

8 statement, signed by such officer, of the offense charged
9 against the prisoner, unless otherwise authorized by law.

10 (c) Every person authorized to receive prisoners pursuant
11 to section to whose charge a prisoner is committed shall,
12 within twenty-four hours after that commitment or as soon as
13 the person is relieved from guard, report to the commanding
14 officer of the prisoner the name of the prisoner, the offense
15 charged against the prisoner, and the name of the person who
16 ordered or authorized the commitment.

§15-1E-12. Confinement with enemy prisoners prohibited.

1 No member of the state military forces may be placed in
2 confinement in immediate association with enemy prisoners
3 or other foreign nationals not members of the Armed Forces.

§15-1E-13. Punishment prohibited before trial.

1 No person, while being held for trial or awaiting a
2 verdict, may be subjected to punishment or penalty other than
3 arrest or confinement upon the charges pending against the
4 person, nor shall the arrest or confinement imposed upon
5 such person be any more rigorous than the circumstances
6 required to insure the person's presence, but the person may
7 be subjected to minor punishment during that period for
8 infractions of discipline.

§15-1E-14. Delivery of offenders to civil authorities.

1 (a) A person subject to this article accused of an offense
2 against civil authority may be delivered, upon request, to the
3 civil authority for trial or confinement.

4 (b) When delivery under this section is made to any civil
5 authority of a person undergoing sentence of a court-martial,
6 the delivery, if followed by conviction in a civil tribunal,

interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to the place of original custody for the completion of the person's sentence.

PART III. NONJUDICIAL PUNISHMENT.

§15-1E-15. Commanding officer's nonjudicial punishment.

(a) Under such regulations as prescribed, any commanding officer (and for purposes of this article, officers-in-charge) may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this article. The Governor, the Adjutant General, or an officer of a general or flag rank in command may delegate the powers under this section to a principal assistant who is a member of the state military forces.

(b) Any commanding officer may impose upon enlisted members of the officer's command:

(1) An admonition;

(2) A reprimand;

(3) The withholding of privileges for not more than six months which need not be consecutive;

(4) The forfeiture of pay of not more than seven days' pay;

(5) A fine of not more than seven days' pay;

(6) A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(7) Extra duties, including fatigue or other duties, for not more than fourteen days, which need not be consecutive; and

(8) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen days, which need not be consecutive.

(c) Any commanding officer of the grade of major or lieutenant commander, or above may impose upon enlisted members of the officer's command:

(1) Any punishment authorized in subsection (b) subdivisions (1), (2), and (3);

(2) The forfeiture of not more than one-half of one month's pay per month for two months;

(3) A fine of not more than one month's pay;

(4) A reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(5) Extra duties, including fatigue or other duties, for not more than forty-five days which need not be consecutive; and

(6) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty days which need not be consecutive.

(d) The Governor, the Adjutant General, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose:

(1) Upon officers of the officer's command:

(A) Any punishment authorized in subsection (c) subdivisions (1), (2), (3) and (6); and

(B) Arrest in quarters for not more than thirty days which need not be consecutive.

(2) Upon enlisted members of the officer's command any punishment authorized in subsection (c).

(e) Whenever any of those punishments are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under this article.

(f) Prior to the offer of nonjudicial punishment, the commanding officer shall determine whether arrest in quarters or restriction shall be considered as punishments. Should the commanding officer determine that the punishment options may include arrest in quarters or restriction, the accused shall be notified of the right to demand trial by court-martial. Should the commanding officer determine that the punishment options will not include arrest in quarters or restriction, the accused shall be notified that there is no right to trial by courts-martial in lieu of nonjudicial punishment

(g) The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. The officer also may:

(1) Mitigate reduction in grade to forfeiture of pay;

(2) Mitigate arrest in quarters to restriction; or

(3) Mitigate extra duties to restriction.

The mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(h) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority within fifteen days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (g) by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority that is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(i) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(j) Whenever a punishment of forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

(k) Regulations may prescribe the form of records to be kept of proceedings under this section and may prescribe that certain categories of those proceedings shall be in writing.

PART IV. COURT-MARTIAL JURISDICTION.

§15-1E-16. Courts-martial classified.

The three kinds of courts-martial in the state military forces are:

(1) General courts-martial, consisting of:

(A) A military judge and not less than five members; or

(B) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) Special courts-martial, consisting of:

(A) A military judge and not less than three members; or

(B) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in subdivision (1) of this section so requests; and

(3) Summary courts-martial, consisting of one commissioned officer.

§15-1E-17. Jurisdiction of courts-martial in general.

Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are subject to this article. Additionally, the Army and Air National Guard state military forces have court-martial jurisdiction over all members subject to this article.

§15-1E-18. Jurisdiction of general courts-martial.

Subject to section seventeen of this article, general courts-martial have jurisdiction to try persons subject to this article for any offense made punishable by this article, and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this article.

§15-1E-19. Jurisdiction of special courts-martial.

Subject to section seventeen, special courts-martial have jurisdiction to try persons subject to this article for any offense made punishable by this article, and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this article except dishonorable discharge, dismissal, confinement for more than one year, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

§15-1E-20. Jurisdiction of summary courts-martial.

(a) Subject to section seventeen of this article, summary courts-martial have jurisdiction to try persons subject to this article, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this article under such limitations as the Governor may prescribe.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if that person objects thereto. If objection to trial by summary court-martial is made by an

accused, trial by special or general court-martial may be ordered, as may be appropriate. Summary courts-martial may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this article except dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

§15-1E-21. Reserved.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

§15-1E-22. Who may convene general courts-martial.

(a) General courts-martial may be convened by:

(1) The Governor;

(2) The Adjutant General;

(3) The commanding officer of a force of the state military forces;

(4) The commanding officer of a division or a separate brigade; or

(5) The commanding officer of a separate wing.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

§15-1E-23. Who may convene special courts-martial.

(a) Special courts-martial may be convened by:

(1) Any person who may convene a general court-martial;

(2) The commanding officer of a garrison, fort, post, camp, station, Air National Guard base, or naval base or station;

(3) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) The commanding officer of a wing, group, separate squadron, or corresponding unit of the Air Force; or

(5) The commanding officer or officer in charge of any other command when empowered by The Adjutant General.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

§15-1E-24. Who may convene summary courts-martial.

(a) Summary courts-martial may be convened:

(1) By any person who may convene a general or special court-martial;

(2) The commanding officer of a detached company or other detachment, or corresponding unit of the Army;

(3) The commanding officer of a detached squadron or other detachment, or corresponding unit of the Air Force; or

(4) The commanding officer or officer in charge of any other command when empowered by The Adjutant General.

10 (b) When only one commissioned officer is present with
11 a command or detachment that officer shall be the summary
12 court-martial of that command or detachment and shall hear
13 and determine all summary court-martial cases. Summary
14 courts-martial may, however, be convened in any case by
15 superior competent authority if considered desirable by such
16 authority.

§15-1E-25. Who may serve on courts-martial.

1 (a) Any commissioned officer of the state military forces
2 is eligible to serve on all courts-martial for the trial of any
3 person subject to this article.

4 (b) Any warrant officer of the state military forces is
5 eligible to serve on general and special courts-martial for the
6 trial of any person subject to this article, other than a
7 commissioned officer.

8 (c) Any enlisted member of the state military forces who
9 is not a member of the same unit as the accused is eligible to
10 serve on general and special courts-martial for the trial of any
11 enlisted member subject to this article, but that member shall
12 serve as a member of a court only if, before the conclusion of
13 a session called by the military judge under subsection (a),
14 section thirty-nine of this article prior to trial or, in the
15 absence of such a session, before the court is assembled for
16 the trial of the accused, the accused personally has requested
17 orally on the record or in writing that enlisted members serve
18 on it. After such a request, the accused may not be tried by
19 a general or special court-martial the membership of which
20 does not include enlisted members in a number comprising
21 at least one third of the total membership of the court, unless
22 eligible enlisted members cannot be obtained on account of
23 physical conditions or military exigencies. If such members
24 cannot be obtained, the court may be assembled and the trial
25 held without them, but the convening authority shall make a

26 detailed written statement, to be appended to the record,
27 stating why they could not be obtained. In this section, "unit"
28 means any regularly organized body of the state military
29 forces not larger than a company, a squadron, a division of
30 the naval militia, or a body corresponding to one of them.

31 (d) When it can be avoided, no person subject to this
32 article may be tried by a court-martial any member of which
33 is junior to the accused in rank or grade.

34 (e) When convening a court-martial, the convening
35 authority shall detail as members thereof such members of
36 the state military forces as, in the convening authority's
37 opinion, are best qualified for the duty by reason of age,
38 education, training, experience, length of service, and judicial
39 temperament. No member of the state military forces is
40 eligible to serve as a member of a general or special court-
41 martial when that member is the accuser, a witness, or has
42 acted as investigating officer or as counsel in the same case.

43 (f) Before a court-martial is assembled for the trial of a
44 case, the convening authority may excuse a member of the
45 court from participating in the case. The convening authority
46 may delegate the authority under this subsection to a judge
47 advocate or to any other principal assistant.

§15-1E-26. Military judge of a general or special court-martial.

1 (a) A military judge shall be detailed to each general and
2 special court-martial. The military judge shall preside over
3 each open session of the court-martial to which the military
4 judge has been detailed.

5 (b) A military judge shall be:

6 (1) An active or retired commissioned officer of an
7 organized state military force;

8 (2) A member in good standing of the bar of the highest
9 court of a state or a member of the bar of a federal court for
10 at least five years; and

11 (3) Certified as qualified for duty as a military judge by
12 the senior force judge advocate which is the same force as the
13 accused.

14 (c) In the instance when a military judge is not a member
15 of the bar of the highest court of the state, the military judge
16 shall be deemed admitted pro hac vice, subject to filing a
17 certificate with the senior force judge advocate which is the
18 same force as the accused setting forth such qualifications
19 provided in subsection (b).

20 (d) The military judge of a general or special court-
21 martial shall be designated by the senior force judge advocate
22 which is the same force as the accused, or a designee, for
23 detail by the convening authority. Neither the convening
24 authority nor any staff member of the convening authority
25 shall prepare or review any report concerning the
26 effectiveness, fitness, or efficiency of the military judge so
27 detailed, which relates to performance of duty as a military
28 judge.

29 (e) No person is eligible to act as military judge in a case
30 if that person is the accuser or a witness, or has acted as
31 investigating officer or a counsel in the same case.

32 (f) The military judge of a court-martial may not consult
33 with the members of the court except in the presence of the
34 accused, trial counsel, and defense counsel nor vote with the
35 members of the court.

§15-1E-27. Detail of trial counsel and defense counsel.

1 (a) For each general and special court-martial the
2 authority convening the court shall detail trial counsel,

defense counsel and such assistants as are appropriate. No person who has acted as investigating officer, military judge, witness or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Except as provided in subsection (c), trial counsel or defense counsel detailed for a general or special court-martial must be a judge advocate as defined in section one of this article and in the case of trial counsel, a member in good standing of the bar of the Supreme Court of Appeals of West Virginia.

(c) In the instance when a defense counsel is not a member of the bar of the highest court of the state, the defense counsel shall be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth the qualifications that counsel is:

(1) A commissioned officer of the Armed Forces of the United States or a component thereof; and

(2) A member in good standing of the bar of the highest court of a state; and

(3) A certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or the Marine Corps; or

(4) A judge advocate as defined in section one of this article.

§15-1E-28. Detail or employment of reporters and interpreters.

Under such regulations as may be prescribed, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters who shall interpret for the court.

§15-1E-29. Absent and additional members.

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of paragraph (b), subdivision (1) or paragraph (b), subdivision (2) of section sixteen of this article, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

PART VI. PRETRIAL PROCEDURE.

§15-1E-30. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this article under oath before a commissioned officer authorized by subsection (a), section one hundred thirty-six of this article to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of the signer's knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

§15-1E-31. Compulsory self-incrimination prohibited.

(a) No person subject to this article may compel any person to incriminate himself or herself or to answer any

question the answer to which may tend to incriminate him or her.

(b) No person subject to this article may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(c) No person subject to this article may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

(d) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

§15-1E-32. Investigation.

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section thirty-

13 eight of this article and in regulations prescribed under this
14 article. At that investigation, full opportunity shall be given
15 to the accused to cross-examine witnesses against the
16 accused, if they are available, and to present anything the
17 accused may desire in the accused's own behalf, either in
18 defense or mitigation, and the investigating officer shall
19 examine available witnesses requested by the accused. If the
20 charges are forwarded after the investigation, they shall be
21 accompanied by a statement of the substance of the testimony
22 taken on both sides and a copy thereof shall be given to the
23 accused.

24 (c) If an investigation of the subject matter of an offense
25 has been conducted before the accused is charged with the
26 offense, and if the accused was present at the investigation
27 and afforded the opportunities for representation, cross-
28 examination, and presentation prescribed in subsection (b),
29 no further investigation of that charge is necessary under this
30 section unless it is demanded by the accused after the
31 accused is informed of the charge. A demand for further
32 investigation entitles the accused to recall witnesses for
33 further cross-examination and to offer any new evidence in
34 the accused's own behalf.

35 (d) If evidence adduced in an investigation under this
36 section indicates that the accused committed an uncharged
37 offense, the investigating officer may investigate the subject
38 matter of that offense without the accused having first been
39 charged with the offense if the accused:

40 (1) Is present at the investigation;

41 (2) Is informed of the nature of each uncharged offense
42 investigated; and

43 (3) Is afforded the opportunities for representation, cross-
44 examination, and presentation prescribed in subsection (b).

(e) The requirements of this section are binding on all persons administering this article but failure to follow them does not constitute jurisdictional error.

§15-1E-33. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall within eight days after the accused is ordered into arrest or confinement, if practicable, forwards the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay.

§15-1E-34. Advice of judge advocate and reference for trial.

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to a judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless the convening authority has been advised in writing by a judge advocate that:

(1) The specification alleges an offense under this article;

(2) The specification is warranted by the evidence indicated in the report of investigation under section thirty-two of this article, if there is such a report; and

(3) A court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the judge advocate:

(1) Expressing conclusions with respect to each matter set forth in subsection (a); and

(2) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the judge advocate shall accompany the specification.

(c) If the charges or specifications are not correct formally or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

§15-1E-35. Service of charges.

The trial counsel shall serve or caused to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of five days after the service of charges upon the accused, or in a special court-martial, within a period of three days after the service of charges upon the accused.

PART VII. TRIAL PROCEDURE.

§15-1E-36. Governor or the Adjutant General may prescribe rules.

Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this article, and for courts of inquiry, may be prescribed by the Governor or the Adjutant General by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the Armed Forces but which may not be contrary to or inconsistent with this article.

§15-1E-37. Unlawfully influencing action of court.

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, the military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this article may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of the subsection shall not apply with respect to: (1) General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or (2) to statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used, in whole or in part, for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this article may, in preparing any such report: (1) Consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or (2) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

§15-1E-38. Duties of trial counsel and defense counsel.

1 (a) The trial counsel of a general or special court-martial
2 shall be a member in good standing of the State Bar and shall
3 prosecute in the name of the state, and shall, under the
4 direction of the court, prepare the record of the proceedings.

5 (b) (1) The accused has the right to be represented in
6 defense before a general or special court-martial or at an
7 investigation under section thirty-two of this article as
8 provided in this subsection.

9 (2) The accused may be represented by civilian counsel
10 at the provision and expense of the accused.

11 (3) The accused may be represented:

12 (A) By military counsel detailed under section twenty-
13 seven of this article; or

14 (B) By military counsel of the accused's own selection if
15 that counsel is reasonably available as determined under
16 subdivision (7).

17 (4) If the accused is represented by civilian counsel,
18 military counsel detailed or selected under subdivision (3)
19 shall act as associate counsel unless excused at the request of
20 the accused.

21 (5) Except as provided under subdivision (6), if the
22 accused is represented by military counsel of his or her own
23 selection under paragraph (B), subdivision (3), any military
24 counsel detailed under paragraph (A), subdivision (3), shall
25 be excused.

26 (6) The accused is not entitled to be represented by more
27 than one military counsel. However, the person authorized

under regulations prescribed under section twenty-seven of this article to detail counsel, in that person's sole discretion:

(A) May detail additional military counsel as assistant defense counsel; and

(B) If the accused is represented by military counsel of the accused's own selection under paragraph (B), subdivision (3), may approve a request from the accused that military counsel detailed under paragraph (A), subdivision (3), act as associate defense counsel.

(7) The senior force judge advocate of the same force of which the accused is a member, shall determine whether the military counsel selected by an accused is reasonably available.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel:

(1) May forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel considers appropriate;

(2) May assist the accused in the submission of any matter under section sixty of this article; and

(3) May take other action authorized by this article.

§15-1E-39. Sessions.

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject section thirty-five of this article, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this article, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) Holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which does not require the presence of the members of the court under this article.

(b) These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to section twenty-nine.

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

§15-1E-40. Continuances.

The military judge of a court-martial or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§15-1E-41. Challenges.

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section sixteen of this article, all parties shall, notwithstanding section twenty-nine of this article, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section sixteen of this article, the parties shall, notwithstanding section twenty-nine of this article, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(3) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

§15-1E-42. Oaths or affirmations.

(a) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined under oath or affirmation.

§15-1E-43. Statute of limitations.

(a) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section fifteen of this article if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under section fifteen of this article.

(b) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this article.

(c) Periods in which the accused was absent from territory in which the state has the authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(d) When the United States is at war, the running of any statute of limitations applicable to any offense under this article:

(1) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;

(2) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or

(3) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency; is suspended until two years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(e)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(A) Has expired or will expire.

(B) Will expire within one hundred eighty days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in subdivision (2) are met.

(2) The conditions referred to in subdivision (1) are that the new charges and specifications must:

(A) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty days after the dismissal of the charges or specifications; and

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications.

§15-1E-44. Former jeopardy.

(a) No person may, without his or her consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

§15-1E-45. Pleas of the accused.

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to

plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty.

§15-1E-46. Opportunity to obtain witnesses and other evidence.

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the Armed Forces of the United States, but which may not be contrary to or inconsistent with this article. Process shall run to any part of the United States, or the Territories, Commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

§15-1E-47. Refusal to appear or testify.

(a) Any person not subject to this article who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court

of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of the state; and

(3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; may be punished by the military court in the same manner as a criminal court of the state.

(b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

§15-1E-48. Contempts.

A military judge or summary court-martial officer may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(1) A person subject to this article may be punished for contempt by confinement not to exceed thirty days or a fine of $100, or both.

(2) A person not subject to this article may be punished for contempt by a military court in the same manner as a criminal court of the state.

§15-1E-49. Depositions.

(a) At any time after charges have been signed as provided in section thirty of this article, any party may take

oral or written depositions unless the military judge or summary court-martial officer hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if it appears:

(1) That the witness resides or is beyond the state in which the court is ordered to sit, or beyond one hundred miles from the place of trial or hearing;

(2) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown.

§15-1E-50. Admissibility of records of courts of inquiry.

(a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry.

§15-1E-50a. Defense of lack of mental responsibility.

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused:

(1) Guilty;

(2) Not guilty; or

(3) Not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused:

(1) Guilty;

(2) Not guilty; or

(3) Not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section fifty-two of this article, the accused shall be found not guilty only by reason of lack of mental responsibility if:

(1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

§15-1E-51. Voting and rulings.

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret

written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section fifty-two of this article, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a or reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§15-1E-52. Number of votes required.

(a) No person may be convicted of an offense except as provided in section forty-two of this article or by the concurrence of two thirds of the members present at the time the vote is taken.

(b) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

§15-1E-53. Court to announce action.

A court-martial shall announce its findings and sentence to the parties as soon as determined.

§15-1E-54. Record of trial.

(a) Each general and special court-martial shall keep a separate record of the proceedings in each case brought

before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his or her death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his or her death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) (1) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations.

(c) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

PART VIII. SENTENCES.

§15-1E-55. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this article. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

§15-1E-56. Maximum limits.

(a) The punishment which a court-martial may direct for an offense may not exceed such limits as prescribed by this article, but in no instance may a sentence exceed more than ten years for a military offense, nor shall a sentence of death be adjudged. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one year is a felony offense. Except for convictions by a summary court-martial, all other military offenses are misdemeanors. Any conviction by a summary court-martial is not a criminal conviction.

(b) The limits of punishment for violations of the punitive articles prescribed herein shall be lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on January 1, 2004, and the state manual for courts-martial, but in no instance shall any punishment exceed that authorized by this article.

§15-1E-57. Effective date of sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

§15-1E-57a. Deferment of sentences.

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in that person's sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences an accused referred to in subdivision (2) of this subsection, to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the state military forces by a state, the United States, or a foreign country referred to in that subdivision.

(2) Subdivision (1) of this subsection applies to a person subject to this article who:

(A) While in the custody of a state, the United States, or a foreign country is temporarily returned by that state, the United States, or a foreign country to the state military forces for trial by court-martial; and

(B) After the court-martial, is returned to that state, the United States, or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term "state" includes the District of Columbia and any Commonwealth, Territory, or possession of the United States.

(c) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under subsection (a), section sixty-seven of this article is pending, the Adjutant General may defer further service of the sentence to confinement while that review is pending.

§15-1E-58. Execution of confinement.

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this article. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of "hard labor" as a sentence authorized under this article does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.

§15-1E-58a. Sentences: reduction in enlisted grade upon approval.

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

(1) A dishonorable or bad-conduct discharge; or

(2) Confinement; reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a), the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

§15-1E-58b. Sentences: forfeiture of pay and allowances during confinement.

(a)(1) A court-martial sentence described in subdivision (2) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under subsection (a), section fifty-seven of this article and may be deferred as provided by that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes:

(A) Confinement for more than six months; or

(B) Confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section

19 sixty of this article may waive any or all of the forfeitures of
20 pay and allowances required by subsection (a) for a period
21 not to exceed six months. Any amount of pay or allowances
22 that, except for a waiver under this subsection, would be
23 forfeited shall be paid, as the convening authority or other
24 person taking action directs, to the dependents of the accused.

25 (c) If the sentence of a member who forfeits pay and
26 allowances under subsection (a) is set aside or disapproved
27 or, as finally approved, does not provide for a punishment
28 referred to in subdivision (2), subsection (a), the member
29 shall be paid the pay and allowances which the member
30 would have been paid, except for the forfeiture, for the period
31 during which the forfeiture was in effect.

PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL.

§15-1E-59. Error of law; lesser included offense.

1 (a) A finding or sentence of a court-martial may not be
2 held incorrect on the ground of an error of law unless the
3 error materially prejudices the substantial rights of the
4 accused.

5 (b) Any reviewing authority with the power to approve or
6 affirm a finding of guilty may approve or affirm, instead, so
7 much of the finding as includes a lesser included offense.

§15-1E-60. Action by the convening authority.

1 (a) The findings and sentence of a court-martial shall be
2 reported promptly to the convening authority after the
3 announcement of the sentence.

4 (b)(1) The accused may submit to the convening
5 authority matters for consideration by the convening

6 authority with respect to the findings and the sentence. Any
7 such submission shall be in writing. Except in a summary
8 court-martial case, such a submission shall be made within
9 ten days after the accused has been given an authenticated
10 record of trial and, if applicable, the recommendation of a
11 judge advocate under subsection (d). In a summary court-
12 martial case, such a submission shall be made within seven
13 days after the sentence is announced.

14 (2) If the accused shows that additional time is required
15 for the accused to submit such matters, the convening
16 authority or other person taking action under this section, for
17 good cause, may extend the applicable period under
18 subdivision (1) for not more than an additional twenty days.

19 (3) In a summary court-martial case, the accused shall be
20 promptly provided a copy of the record of trial for use in
21 preparing a submission authorized by subdivision (1).

22 (4) The accused may waive the right to make a
23 submission to the convening authority under subdivision (1).
24 Such a waiver must be made in writing and may not be
25 revoked. For the purposes of subdivision (2), subsection (c),
26 the time within which the accused may make a submission
27 under this subsection shall be deemed to have expired upon
28 the submission of such a waiver to the convening authority.

29 (c)(1) The authority under this section to modify the
30 findings and sentence of a court-martial is a matter of
31 command prerogative involving the sole discretion of the
32 convening authority. If it is impractical for the convening
33 authority to act, the convening authority shall forward the
34 case to a person exercising general court-martial jurisdiction
35 who may take action under this section.

36 (2) Action on the sentence of a court-martial shall be
37 taken by the convening authority or by another person

38 authorized to act under this section. Such action may be
39 taken only after consideration of any matters submitted by
40 the accused under subsection (b) or after the time for
41 submitting such matters expires, whichever is earlier. The
42 convening authority or other person taking such action, in
43 that person's sole discretion may approve, disapprove,
44 commute, or suspend the sentence in whole or in part.

45 (3) Action on the findings of a court-martial by the
46 convening authority or other person acting on the sentence is
47 not required. However, such person, in the person's sole
48 discretion may:

49 (A) Dismiss any charge or specification by setting aside
50 a finding of guilty thereto; or

51 (B) Change a finding of guilty to a charge or specification
52 to a finding of guilty to an offense that is a lesser included
53 offense of the offense stated in the charge or specification.

54 (d) Before acting under this section on any general or
55 special court-martial case in which there is a finding of guilt,
56 the convening authority or other person taking action under
57 this section shall obtain and consider the written
58 recommendation of a judge advocate. The convening
59 authority or other person taking action under this section
60 shall refer the record of trial to the judge advocate, and the
61 judge advocate shall use such record in the preparation of the
62 recommendation. The recommendation of the judge advocate
63 shall include such matters as may be prescribed by regulation
64 and shall be served on the accused, who may submit any
65 matter in response under subsection (b). Failure to object in
66 the response to the recommendation or to any matter attached
67 to the recommendation waives the right to object thereto.

68 (e)(1) The convening authority or other person taking
69 action under this section, in the person's sole discretion, may
70 order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(A) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this article; or

(C) Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

§15-1E-61. Withdrawal of appeal.

(a) In each case subject to appellate review under this article, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to such appeal. Such a withdrawal shall be signed by both the

accused and his or her defense counsel and must be filed in accordance with appellate procedures as provided by law.

(b) The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law.

§15-1E-62. Appeal by the state.

(a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in paragraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within seventy-two hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted as provided by law.

(b) An appeal under this section shall be forwarded to the court prescribed in section sixty-seven-a of this article. In ruling on an appeal under this article, that court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

§15-1E-63. Rehearings.

Each rehearing under this article shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence

11 approved after the first court-martial was in accordance with
12 a pretrial agreement and the accused at the rehearing changes
13 a plea with respect to the charges or specifications upon
14 which the pretrial agreement was based, or otherwise does
15 not comply with the pretrial agreement, the approved
16 sentence as to those charges or specifications may include
17 any punishment not in excess of that lawfully adjudged at the
18 first court-martial.

§15-1E-64. Review by the senior force judge advocate.

1 (a) Each general and special court-martial case in which
2 there has been a finding of guilty shall be reviewed by the
3 senior force judge advocate, or a designee. The senior force
4 judge advocate, or designee, may not review a case under this
5 subsection if that person has acted in the same case as an
6 accuser, investigating officer, member of the court, military
7 judge, or counsel or has otherwise acted on behalf of the
8 prosecution or defense. The senior force judge advocate's
9 review shall be in writing and shall contain the following:

10 (1) Conclusions as to whether:

11 (A) The court had jurisdiction over the accused and the
12 offense;

13 (B) The charge and specification stated an offense; and

14 (C) The sentence was within the limits prescribed as a
15 matter of law.

16 (2) A response to each allegation of error made in writing
17 by the accused.

18 (3) If the case is sent for action under subsection (b), a
19 recommendation as to the appropriate action to be taken and
20 an opinion as to whether corrective action is required as a
21 matter of law.

22 (b) The record of trial and related documents in each case
23 reviewed under subsection (a) shall be sent for action to the
24 Adjutant General, if:

25 (1) The judge advocate who reviewed the case
26 recommends corrective action;

27 (2) The sentence approved under subsection (c), section
28 sixty of this article extends to dismissal, a bad-conduct or
29 dishonorable discharge, or confinement for more than six
30 months; or

31 (3) Such action is otherwise required by regulations of
32 the Adjutant General.

33 (c)(1) The Adjutant General may:

34 (A) Disapprove or approve the findings or sentence, in
35 whole or in part;

36 (B) Remit, commute, or suspend the sentence in whole or
37 in part;

38 (C) Except where the evidence was insufficient at the
39 trial to support the findings, order a rehearing on the findings,
40 on the sentence, or on both; or

41 (D) Dismiss the charges.

42 (2) If a rehearing is ordered but the convening authority
43 finds a rehearing impracticable, the convening authority shall
44 dismiss the charges.

45 (3) If the opinion of the senior force judge advocate, or
46 designee, in the senior force judge advocate's review under
47 subsection (a) is that corrective action is required as a matter
48 of law and if the Adjutant General does not take action that
49 is at least as favorable to the accused as that recommended by

50 the judge advocate, the record of trial and action thereon shall
51 be sent to the Governor for review and action as deemed
52 appropriate.

53 (d) The senior force judge advocate, or a designee, may
54 review any case in which there has been a finding of not
55 guilty of all charges and specifications. The senior force
56 judge advocate, or designee, may not review a case under this
57 subsection if that person has acted in the same case as an
58 accuser, investigating officer, member of the court, military
59 judge, or counsel or has otherwise acted on behalf of the
60 prosecution or defense. The senior force judge advocate's
61 review shall be limited to questions of subject matter
62 jurisdiction.

63 (e) The record of trial and related documents in each case
64 reviewed under subsection (d) shall be sent for action to The
65 Adjutant General. The Adjutant General may:

66 (1) When subject matter jurisdiction is found to be
67 lacking, void the court-martial ab initio, with or without
68 prejudice to the Government, as the Adjutant General deems
69 appropriate; or

70 (2) Return the record of trial and related documents to the
71 senior force judge advocate for appeal by the Government as
72 provided by law.

§15-1E-65. Disposition of records after review by the convening authority.

1 Except as otherwise required by this article, all records of
2 trial and related documents shall be transmitted and disposed
3 of as prescribed by regulation and provided by law.

§15-1E-66. Reserved.

§15-1E-67. Reserved.

§15-1E-67a. Review by State Appellate Authority.

1 Decisions of a court-martial are from a court with
2 jurisdiction to issue felony convictions and appeals are to the
3 West Virginia Supreme Court of Appeals. The appellate
4 procedures to be followed shall be those provided by law for
5 the appeal of criminal cases thereto.

§15-1E-68. Reserved.

§15-1E-69. Reserved.

§15-1E-70. Appellate counsel.

1 (a) The senior force judge advocate shall detail a judge
2 advocate as appellate government counsel to represent the
3 state in the review or appeal of cases specified in section
4 sixty-seven-a of this article and before any federal court
5 when requested to do so by the state Attorney General.
6 Appellate government counsel must be a member in good
7 standing of the bar of the highest court of the state to which
8 the appeal is taken.

9 (b) Upon an appeal by the state, an accused has the right
10 to be represented by detailed military counsel before any
11 reviewing authority and before any appellate court.

12 (c) Upon the appeal by an accused, the accused has the
13 right to be represented by military counsel before any
14 reviewing authority.

15 (d) Upon the request of an accused entitled to be so
16 represented, the senior force judge advocate shall appoint a
17 judge advocate to represent the accused in the review or
18 appeal of cases specified in subsections (b) and (c) of this
19 section.

(e) An accused may be represented by civilian appellate counsel at no expense to the state.

§15-1E-71. Execution of sentence; suspension of sentence.

(a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under section sixty-one of this article, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in such cases when review is completed by an appellate court prescribed in section sixty-seven-a of this article, and is deemed final by the law of state where the judgment was had.

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under section sixty-one of this article, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under section sixty-four of this article is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section sixty of this article when so approved under that section.

§15-1E-72. Vacation of suspension.

(a) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of

6 probation. The probationer shall be represented at the
7 hearing by military counsel if the probationer so desires.

8 (b) The record of the hearing and the recommendation of
9 the officer having special court-martial jurisdiction shall be
10 sent for action to the officer exercising general court-martial
11 jurisdiction over the probationer. If the officer vacates the
12 suspension, any unexecuted part of the sentence, except a
13 dismissal, shall be executed, subject to applicable restrictions
14 in this article.

15 (c) The suspension of any other sentence may be vacated
16 by any authority competent to convene, for the command in
17 which the accused is serving or assigned, a court of the kind
18 that imposed the sentence.

§15-1E-73. Petition for a new trial.

1 At any time within two years after approval by the
2 convening authority of a court-martial sentence the accused
3 may petition the Adjutant General for a new trial on the
4 grounds of newly discovered evidence or fraud on the court-
5 martial.

§15-1E-74. Remission and suspension.

1 (a) Any authority competent to convene, for the
2 command in which the accused is serving or assigned, a court
3 of the kind that imposed the sentence may remit or suspend
4 any part or amount of the unexecuted part of any sentence,
5 including all uncollected forfeitures other than a sentence
6 approved by the Governor.

7 (b) The Governor may, for good cause, substitute an
8 administrative form of discharge for a discharge or dismissal
9 executed in accordance with the sentence of a court-martial.

§15-1E-75. Restoration.

(a) Under such regulations as may be prescribed, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Governor may substitute therefore a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor may substitute therefore a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

§15-1E-76. Finality of proceedings, findings, and sentences.

The appellate review of records of trial provided by this article, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this article, and all dismissals and discharges carried into

execution under sentences by courts-martial following approval, review, or affirmation as required by this article, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in section seventy-three of this article and to action under section seventy-four of this article.

§15-1E-76a. Leave required to be taken pending review of certain court-martial convictions.

Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this section if the sentence, as approved under section sixty of this article, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section sixty of this article or at any time after such date, and such leave may be continued until the date on which action under this section is completed or may be terminated at any earlier time.

§15-1E-76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

(a) Persons incompetent to stand trial.

(1) In the case of a person determined under this article to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-

8 martial convening authority for that person shall commit the
9 person to the custody of the Department of Health and
10 Human Resources.

11 (2) The Department of Health and Human Resources
12 shall take action in accordance with the state statute
13 applicable to persons incompetent to stand trial. If at the end
14 of the period for hospitalization provided in the state statute
15 applicable to persons incompetent to stand trial, it is
16 determined that the committed person's mental condition has
17 not so improved as to permit the trial to proceed, action shall
18 be taken in accordance with the state statute applicable to
19 persons incompetent to stand trial.

20 (3)(A) When the director of a facility in which a person
21 is hospitalized pursuant to subdivision (2) determines that the
22 person has recovered to such an extent that the person is able
23 to understand the nature of the proceedings against the person
24 and to conduct or cooperate intelligently in the defense of the
25 case, the director shall promptly transmit a notification of that
26 determination to the Department of Health and Human
27 Resources and to the general court-martial convening
28 authority for the person. The director shall send a copy of the
29 notification to the person's counsel.

30 (B) Upon receipt of a notification, the general court-
31 martial convening authority shall promptly take custody of
32 the person unless the person covered by the notification is no
33 longer subject to this article. If the person is no longer
34 subject to this article, the Department of Health and Human
35 Resources shall take any action within its authority it
36 considers appropriate regarding the person.

37 (C) The director of the facility may retain custody of the
38 person for not more than thirty days after transmitting the
39 notifications required by subdivision (3), subsection (a).

(4) In the application of the state statute applicable to persons incompetent to stand trial to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this article at a time relevant to the application of such section to the person, the state trial court with felony jurisdiction in the county where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) Persons found not guilty by reason of lack of mental responsibility.

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this article.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with the state statute applicable to persons incompetent to stand trial.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find, by the standard specified in the state statute applicable to persons incompetent to stand trial, that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect:

(A) The general court-martial convening authority may commit the person to the custody of the Department of Health and Human Resources; and

71 (B) The Department of Health and Human Resources
72 shall take action in accordance with the state statute
73 applicable to persons incompetent to stand trial.

74 (5) The state statute applicable to persons incompetent to
75 stand trial, shall apply in the case of a person hospitalized
76 pursuant to paragraph (B), subdivision (4), except that the
77 state trial court with felony jurisdiction in the county where
78 the person is hospitalized shall be considered as the court that
79 ordered the person's commitment.

80 (c) General provisions.

81 (1) Except as otherwise provided in this subsection and
82 subdivision (1), subsection (d), the state statute most closely
83 comparable to 18 U.S.C. 4247(d), apply in the administration
84 of this section.

85 (2) In the application of the state statute most closely
86 comparable to 18 U.S.C. 4247(d), to hearings conducted by
87 a court-martial under this section or by order of a general
88 court-martial convening authority under this article, the
89 reference in that section to article 3006A of such title does
90 not apply.

91 (d) Applicability.

92 (1) The state statute most closely comparable to chapter
93 313 of title 18, United States Code, [10 U.S.C. § 4241 et seq.]
94 referred to in this section apply according to the provisions of
95 this section notwithstanding article 4247(j) of title 18.

96 (2) If the status of a person as described in section two of
97 this article, terminates while the person is, pursuant to this
98 section, in the custody of the Department of Health and
99 Human Resources, hospitalized, or on conditional release

100 under a prescribed regimen of medical, psychiatric, or
101 psychological care or treatment, the provisions of this section
102 establishing requirements and procedures regarding a person
103 no longer subject to this article shall continue to apply to that
104 person notwithstanding the change of status.

PART X. PUNITIVE ARTICLES.

§15-1E-77. Principals.

1 Any person subject to this article is a principal who:

2 (1) Commits an offense punishable by this article, or aids,
3 abets, counsels, commands, or procures its commission; or

4 (2) Causes an act to be done which if directly performed
5 by him or her would be punishable by this article.

§15-1E-78. Accessory after the fact.

1 Any person subject to this article who, knowing that an
2 offense punishable by this article has been committed,
3 receives, comforts, or assists the offender in order to hinder
4 or prevent his or her apprehension, trial, or punishment shall
5 be punished as a court-martial may direct.

§15-1E-79. Conviction of lesser included offense.

1 An accused may be found guilty of an offense necessarily
2 included in the offense charged or of an attempt to commit
3 either the offense charged or an offense necessarily included
4 therein.

§15-1E-80. Attempts.

(a) An act, done with specific intent to commit an offense under this article, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this article who attempts to commit any offense punishable by this article shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this article may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

§15-1E-81. Conspiracy.

Any person subject to this article who conspires with any other person to commit an offense under this article shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

§15-1E-82. Solicitation.

(a) Any person subject to this article who solicits or advises another or others to desert in violation of section eighty-five of this article or mutiny in violation of section ninety-four of this article shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(b) Any person subject to this article who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section ninety-nine of this article or sedition in violation of section ninety-four of this

article shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

§15-1E-83. Fraudulent enlistment, appointment, or separation.

Any person, shall be punished as a court-martial may direct, who:

(1) Procures his or her own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances there under; or

(2) Procures his or her own separation from the state military forces by knowingly false representation or deliberate concealment as to his or her eligibility for that separation.

§15-1E-84. Unlawful enlistment, appointment, or separation.

Any person subject to this article who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him or her to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

§15-1E-85. Desertion.

(a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away there from permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the Armed Forces of the United States, without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away there from permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment as a court-martial may direct.

§15-1E-86. Absence without leave.

Any person subject to this article who, without authority:

(1) Fails to go to his or her appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed; shall be punished as a court-martial may direct.

§15-1E-87. Missing movement.

1 Any person subject to this article who through neglect or
2 design misses the movement of a ship, aircraft, or unit with
3 which he or she is required in the course of duty to move
4 shall be punished as a court-martial may direct.

§15-1E-88. Contempt toward officials.

1 Any commissioned officer who uses contemptuous words
2 against the President, the Vice President, Congress, the
3 Secretary of Defense, the Secretary of a military department,
4 the Secretary of Homeland Security, or the Governor or
5 Legislature of the state shall be punished as a court-martial
6 may direct.

§15-1E-89. Disrespect toward superior commissioned officer.

1 Any person subject to this article who behaves with
2 disrespect toward his or her superior commissioned officer
3 shall be punished as a court-martial may direct.

§15-1E-90. Assaulting or willfully disobeying superior commissioned officer.

1 Any person subject to this article who:

2 (1) Strikes his or her superior commissioned officer or
3 draws or lifts up any weapon or offers any violence against
4 him or her while he or she is in the execution of his or her
5 office; or

6 (2) Willfully disobeys a lawful command of his or her
7 superior commissioned officer;

8 (3) Shall be punished, if the offense is committed in time
9 of war, by confinement of not more than ten years or such

other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment as a court-martial may direct.

§15-1E-91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.

Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his or her office;

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his or her office; shall be punished as a court-martial may direct.

§15-1E-92. Failure to obey order or regulation.

Any person subject to this article who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces, which it is his or her duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his or her duties; shall be punished as a court-martial may direct.

§15-1E-93. Cruelty and maltreatment.

Any person subject to this article who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

§15-1E-94. Mutiny or sedition.

(a) Any person subject to this article who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

§15-1E-95. Resistance, flight, breach of arrest, and escape.

Any person subject to this article who:

(1) Resists apprehension;

(2) Flees from apprehension;

(3) Breaks arrest; or

(4) Escapes from custody or confinement; shall be punished as a court-martial may direct.

§15-1E-96. Releasing prisoner without proper authority.

Any person subject to this article who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

§15-1E-97. Unlawful detention.

Any person subject to this article who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

§15-1E-98. Noncompliance with procedural rules.

Any person subject to this article who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this article; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this article regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct.

§15-1E-99. Misbehavior before the enemy.

Any person subject to this article who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his or her arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his or her place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the Armed Forces of the United States or the state military forces;

(8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his or her duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the Armed Forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle; shall be punished as a court-martial may direct.

§15-1E-100. Subordinate compelling surrender.

Any person subject to this article who compels or attempts to compel the commander of any of the state military forces of the state, or of any other state, place, vessel, aircraft, or other military property, or of any body of

members of the Armed Forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

§15-1E-101. Improper use of countersign.

Any person subject to this article who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

§15-1E-102. Forcing a safeguard.

Any person subject to this article who forces a safeguard shall be punished as a court-martial may direct.

§15-1E-103. Captured or abandoned property.

(a) All persons subject to this article shall secure all public property taken for the service of the United States or the state, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this article who:

(1) Fails to carry out the duties prescribed in subsection (a);

(2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby he or she receives or expects any profit, benefit, or advantage to himself, herself or another directly or indirectly connected with himself or herself; or

(3) Engages in looting or pillaging; shall be punished as a court-martial may direct.

§15-1E-104. Aiding the enemy.

Any person subject to this article who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly: shall be punished as a court-martial may direct.

§15-1E-105. Misconduct as prisoner.

Any person subject to this article who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

§15-1E-106. Reserved.

§15-1E-107. False official statements.

Any person subject to this article who, with intent to deceive, signs any false record, return, regulation, order, or

other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct.

§15-1E-108. Military property - Loss, damage, destruction, or wrongful disposition.

Any person subject to this article who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Willfully or through neglect damages, destroys, or loses; or

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of; any military property of the United States or of any state, shall be punished as a court-martial may direct.

§15-1E-109. Property other than military property - Waste, spoilage, or destruction.

Any person subject to this article who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of any state shall be punished as a court-martial may direct.

§15-1E-110. Improper hazarding of vessel.

(a) Any person subject to this article who willfully and wrongfully hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or any state military forces shall suffer such punishment as a court-martial may direct.

(b) Any person subject to this article who negligently hazards or suffers to be hazarded any vessel of the Armed Forces of the United States or any state military forces shall be punished as a court-martial may direct.

§15-1E-111. Reserved.

§15-1E-112. Drunk on duty.

Any person subject to this article other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

§15-1E-112a. Wrongful use, possession, etc, of controlled substances.

(a) Any person subject to this article who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces of the United States or of any state military forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in subdivision (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the Armed Forces of the United States.

(3) Any other substance not specified in subdivision (1) or contained on a list prescribed by the President under subdivision (2) that is listed in schedules I through V of article 202 of the Controlled Substances Act 21 U.S.C. § 812.

§15-1E-113. Misbehavior of sentinel.

Any sentinel or look-out who is found drunk or sleeping upon his post or leaves it before being regularly relieved, shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment as a court-martial may direct.

§15-1E-114. Dueling.

Any person subject to this article who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

§15-1E-115. Malingering.

Any person subject to this article who for the purpose of avoiding work, duty, or service:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct.

§15-1E-116. Riot or breach of peace.

1 Any person subject to this article who causes or
2 participates in any riot or breach of the peace shall be
3 punished as a court-martial may direct.

§15-1E-117. Provoking speeches or gestures.

1 Any person subject to this article who uses provoking or
2 reproachful words or gestures towards any other person
3 subject to this article shall be punished as a court-martial may
4 direct.

§15-1E-118. Reserved.

§15-1E-119. Reserved.

§15-1E-120. Reserved.

§15-1E-121. Reserved.

§15-1E-122. Reserved.

§15-1E-123. Reserved.

§15-1E-124. Reserved.

§15-1E-125. Reserved.

§15-1E-126. Reserved.

§15-1E-127. Reserved.

§15-1E-128. Reserved.

§15-1E-129. Reserved.

§15-1E-130. Reserved.

§15-1E-131. Reserved.

§15-1E-132. Frauds against the government.

1 Any person subject to this article:

2 (1) Who, knowing it to be false or fraudulent:

3 (A) Makes any claim against the United States, the state,
4 or any officer thereof; or

5 (B) Presents to any person in the civil or military service
6 thereof, for approval or payment, any claim against the
7 United States, the state, or any officer thereof;

8 (2) Who, for the purpose of obtaining the approval,
9 allowance, or payment of any claim against the United States,
10 the state, or any officer thereof:

11 (A) Makes or uses any writing or other paper knowing it
12 to contain any false or fraudulent statements;

13 (B) Makes any oath, affirmation or certification to any
14 fact or to any writing or other paper knowing the oath,
15 affirmation or certification to be false; or

16 (C) Forges or counterfeits any signature upon any writing
17 or other paper, or uses any such signature knowing it to be
18 forged or counterfeited;

19 (3) Who, having charge, possession, custody, or control
20 of any money, or other property of the United States or the
21 state, furnished or intended for the Armed Forces of the
22 United States or the state military forces, knowingly delivers
23 to any person having authority to receive it, any amount
24 thereof less than that for which he or she receives a certificate
25 or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the Armed Forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct.

§15-1E-133. Conduct unbecoming an officer and a gentleman.

Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

§15-1E-134. General article.

Though not specifically mentioned in this article, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, where a crime constitutes an offense that violates both this article and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with subsection (b), section two of this article.

PART XI. MISCELLANEOUS PROVISIONS

§15-1E-135. Courts of inquiry.

(a) Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this article whose conduct is subject to inquiry shall be designated as a party. Any person subject to this article who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

§15-1E-136. Authority to administer oaths and to act as notary.

(a) The following persons may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the naval militia.

(5) All other persons designated by regulations of the Armed Forces of the United States or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

(1) The president, military judge, and trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the Armed Forces of the United States or by statute.

(c) The signature without seal of any such person, together with the title of his office, is prima facie evidence of the person's authority.

§15-1E-137. Articles to be explained.

(a) (1) The sections of this article specified in subdivision (3) shall be carefully explained to each enlisted member at the time of, or within thirty days after, the member's initial entrance into a duty status with the state military forces.

(2) Such section shall be explained again:

(A) After the member has completed basic or recruit training; and

(B) At the time when the member reenlists.

(3) This subsection applies with respect to sections two, three, seven through fifteen, twenty-five, twenty-seven, thirty-one, thirty-seven, thirty-eight, fifty-five, seventy-seven through one hundred thirty-four, and one hundred thirty-seven through one hundred thirty-nine of this article.

(b) The text of the article and of the regulations prescribed under this article shall be made available to a member of the state military forces, upon request by the member, for the member's personal examination.

§15-1E-138. Complaints of wrongs.

Any member of the state military forces who believes himself or herself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer

7 against whom it is made. The officer exercising general
8 court-martial jurisdiction shall examine into the complaint
9 and take proper measures for redressing the wrong
10 complained of; and shall, as soon as possible, send to the
11 Adjutant General a true statement of that complaint, with the
12 proceedings had thereon.

§15-1E-139. Redress of injuries to property.

1 (a) Whenever complaint is made to any commanding
2 officer that willful damage has been done to the property of
3 any person or that the person's property has been wrongfully
4 taken by members of the state military forces, that person
5 may, under such regulations prescribed, convene a board to
6 investigate the complaint. The board shall consist of from
7 one to three commissioned officers and, for the purpose of
8 that investigation, it has power to summon witnesses and
9 examine them upon oath, to receive depositions or other
10 documentary evidence, and to assess the damages sustained
11 against the responsible parties. The assessment of damages
12 made by the board is subject to the approval of the
13 commanding officer, and in the amount approved by that
14 officer shall be charged against the pay of the offenders. The
15 order of the commanding officer directing charges herein
16 authorized is conclusive on any disbursing officer for
17 payment to the injured parties of the damages so assessed and
18 approved.

19 (b) If the offenders cannot be ascertained, but the
20 organization or detachment to which they belong is known,
21 charges totaling the amount of damages assessed and
22 approved may be made in such proportion as may be
23 considered just upon the individual members thereof who are
24 shown to have been present at the scene at the time the
25 damages complained of were inflicted, as determined by the
26 approved findings of the board.

§15-1E-140. Delegation by the Governor.

1 The Governor may delegate any authority vested in the
2 Governor under this article, and provide for the sub
3 delegation of any such authority, except the power given the
4 Governor by section twenty-two of this article.

§15-1E-141. Payment of fees, costs and expenses.

1 (a) The fees and authorized travel expenses of all
2 witnesses, experts, victims, court reporters and interpreters,
3 fees for the service of process, the costs of collection,
4 apprehension, detention and confinement, and all other
5 necessary expenses of prosecution and the administration of
6 military justice, not otherwise payable by any other source,
7 shall be paid out of the military justice fund.

8 (b) For the foregoing purposes, there is created in the
9 State Treasury a special revenue account, designated the
10 Military Justice Fund that shall be administered by the
11 Adjutant General, from which expenses of military justice
12 shall be paid in the amounts and manner as prescribed by
13 law. The Legislature may appropriate and have deposited in
14 the Military Justice Fund such funds as it deems necessary to
15 carry out the purposes of this article.

§15-1E-142. Payment of fines and disposition thereof.

1 (a) Fines imposed by a military court or through
2 imposition of nonjudicial punishment may be paid to the state
3 and delivered to the court or imposing officer, or to a person
4 executing their process. Fines may be collected in the
5 following manner:

6 (1) By cash or money order;

7 (2) By credit or debit cards in accordance with rules
8 promulgated by the Adjutant General. Any charges made by

the credit company shall be paid by the person responsible for paying the fine or costs;

(3) By retention of any pay or allowances due or to become due the person fined from any state or the United States;

(4) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(b) Unless otherwise required by law, a military court may collect a portion of any costs or fines at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a payment plan which specifies:

(1) The number of payments to be made;

(2) The dates on which the payments are due; and

(3) The amounts due for each payment. The written agreement represents the minimum payments and the last date those payments may be made. The obligor or the obligor's agent may accelerate the payment schedule at any time by paying any additional portion of any costs or fines.

(c) If any costs or fines imposed by a military court or through nonjudicial punishment in a case are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the Adjutant General may notify the Commissioner of the Division of Motor Vehicles of the failure to pay: *Provided,* That in a case in which a person is a nonresident of this state and is assessed a fine or costs by a military court or through nonjudicial punishment, the Adjutant General may notify the Division of Motor Vehicles of the failure to pay within eighty days from the date of judgment and expiration of any stay of execution.

Upon notice, the Division of Motor Vehicles shall suspend any privilege the person defaulting on payment may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until all costs or fines are paid in full: *Provided, however,* That any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay, may, if he or she is employed on a full or part-time basis, petition to the Adjutant General for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the Adjutant General of inability to pay, employment and compliance with other applicable motor vehicle laws, the Adjutant General shall issue an order granting relief.

(d) Any sum so received or retained shall be deposited in the Military Justice Fund or to whomever the court so directs.

§15-1E-143. Uniformity of interpretation.

This article shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, chapter 47 of title 10, United States Code.

§15-1E-144. Immunity for action of military courts.

All persons acting under the provisions of this article, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this article.

§15-1E-145. Reserved.

§15-1E-146. Short Title.

1 This article may be cited as the "Uniform State Code of
2 Military Justice (USCMJ)."

§15-1E-147. Time of taking effect.

1 This act takes effect July 1, 2010.

§15-1E-148. Supersedes existing state military justice codes.

1 Upon enactment and the effective date, this law
2 supersedes all existing statutes, ordinances, directives, rules,
3 regulations, orders and other laws in the state covered by the
4 subject matter of this law, and all such statutes, ordinances,
5 directives, rules, regulations, orders and other laws are
6 hereby repealed.

CHAPTER 201

(Com. Sub. for S. B. 465 - By Senators Kessler, Edgell and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §8-19-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-3-10 of said code, all relating to the discontinuation of water and sewer utility service for a delinquent bill; and eliminating the requirement that a water utility's employee or agent be required to accept payment at the customer's premises in lieu of discontinuing service for a delinquent water or sewer bill.

Be it enacted by the Legislature of West Virginia:

That §8-19-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-20-10 of said code be amended and reenacted; that §16-13-16 of said code be amended and reenacted; that §16-13A-9 of said code be amended and reenacted; and that §24-3-10 of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.
16. Public Health.
24. Public Service Commission.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

19. Municipal and County Waterworks and Electric Power Systems.
20. Combined Systems.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent payment.

All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to $50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of water facilities ten days after the water services become delinquent regardless of whether the municipality or governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however*, That nothing

contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) All rates or charges for water service whenever delinquent shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: *Provided,* That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a

finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

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.

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do: *Provided,* That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage

easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of $100 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent

as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to $100 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate to be set by the Public Service Commission: *Provided,* That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may terminate water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however,* That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities

86 provided shall be delinquent and the municipality or
87 governing body may apply any deposit against any
88 delinquent fee. The user is liable until such time as all rates,
89 fees and charges are fully paid.

90 (c) All rates, fees or charges for water service, sewer
91 service and, if applicable, stormwater service, whenever
92 delinquent, as provided by ordinance of the municipality,
93 shall be liens of equal dignity, rank and priority with the lien
94 on such premises of state, county, school and municipal taxes
95 for the amount thereof upon the real property served. The
96 municipality has the plenary power and authority to enforce
97 such lien in a civil action to recover the money due for
98 services rendered plus court fees and costs and reasonable
99 attorney's fees: *Provided,* That an owner of real property may
100 not be held liable for the delinquent rates, fees or charges for
101 services or facilities of a tenant, nor shall any lien attach to
102 real property for the reason of delinquent rates, fees or
103 charges for services or facilities of a tenant of the real
104 property, unless the owner has contracted directly with the
105 municipality to purchase such services or facilities.

106 (d) Municipalities are hereby granted a deferral of filing
107 fees or other fees and costs incidental to filing an action in
108 magistrate court for collection of the delinquent rates and
109 charges. If the municipality collects the delinquent account,
110 plus fees and costs, from its customer or other responsible
111 party, the municipality shall pay to the magistrate court the
112 filing fees or other fees and costs which were previously
113 deferred.

114 (e) No municipality may foreclose upon the premises
115 served by it for delinquent rates, fees or charges for which a
116 lien is authorized by this section except through a civil action
117 in the circuit court of the county wherein the municipality
118 lies. In every such action, the court shall be required to make
119 a finding based upon the evidence and facts presented that the

municipality has exhausted all other remedies for collection of debts with respect to such delinquencies prior to bringing the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency has been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

(f) Notwithstanding any other provision contained in this article, a municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or acts are not contrary to any rules or orders of the Public Service Commission.

(g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct violation of the municipal stormwater ordinance or regulation, the municipality may correct or have the corrections of the violation made and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body 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.

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to $50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities

provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees or charges,

either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as hereinbefore provided: *Provided,* That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for the expense of operation, repair and maintenance and for the sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge is not paid within twenty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality. The lien may be foreclosed against such lot, parcel of land or building in accordance with the laws relating thereto. Where both water and sewer services are furnished by any municipality to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after they become due, the property

and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting the rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water, sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees or charges for water, sewer and stormwater facilities, including reasonable interest and penalty charges, have been paid in full, as long as such actions are not contrary to any rules or orders of the Public Service Commission: *Provided*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

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.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to

pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the

applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or $50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or $50 has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas

facilities, or both, ten days after the water or gas services become delinquent. *Provided, however,* That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: *Provided,* That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: *Provided, however,* That any termination of water

service must comply with all rules and orders of the Public Service Commission. *Provided further,* That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the Public Service Districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the Public Service District Board shall authorize the district to pay all

reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where

184 stormwater from the real property affects or drains into the
185 stormwater system; and (4) the real property is located in the
186 Municipal Separate Storm Sewer System's designated service
187 area. It is further hereby found, determined and declared that
188 the mandatory use of the stormwater system is necessary and
189 essential for the health and welfare of the inhabitants and
190 residents of the district and of the state. The district may
191 charge and the owner, tenant or occupant shall pay the rates,
192 fees and charges for stormwater services established under
193 this article only after thirty-day notice of the availability of
194 the stormwater system has been received by the owner. An
195 entity providing stormwater service shall provide a tenant a
196 report of the stormwater fee charged for the entire property
197 and, if appropriate, that portion of the fee to be assessed to
198 the tenant.

199 (f) All delinquent fees, rates and charges of the district
200 for either water facilities, sewer facilities, gas facilities or
201 stormwater systems or stormwater management programs are
202 liens on the premises served of equal dignity, rank and
203 priority with the lien on the premises of state, county, school
204 and municipal taxes. Nothing contained within the rules of
205 the Public Service Commission shall be deemed to require
206 any agents or employees of the Public Service Districts to
207 accept payment at the customer's premises in lieu of
208 discontinuing service for a delinquent bill. In addition to the
209 other remedies provided in this section, public service
210 districts are granted a deferral of filing fees or other fees and
211 costs incidental to the bringing and maintenance of an action
212 in magistrate court for the collection of delinquent water,
213 sewer, stormwater or gas bills. If the district collects the
214 delinquent account, plus reasonable costs, from its customer
215 or other responsible party, the district shall pay to the
216 magistrate the normal filing fee and reasonable costs which
217 were previously deferred. In addition, each public service
218 district may exchange with other public service districts a list
219 of delinquent accounts: *Provided,* That an owner of real

property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-10. Termination of water service for delinquent sewer bills.

(a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility that is owned and operated by a homeowners' association owns and operates the other kind of

7 facilities, either water or sewer, then the privately owned
8 public utility or the homeowners' association may contract
9 with the publicly or privately owned utility, city, incorporated
10 town, or public service district which provides the other
11 services to shutoff and discontinue the supplying of water
12 service for the nonpayment of sewer service fees and charges.

13 (b) Any contracts entered into by a privately owned
14 public utility or by a public utility that is owned and operated
15 by a homeowners' association pursuant to this section must
16 be submitted to the Public Service Commission for approval.

17 (c) Any privately owned public utility or any public
18 utility that is owned and operated by a homeowners'
19 association which provides water and sewer service to its
20 customers may terminate water service for delinquency in
21 payment of either water or sewer bills.

22 (d) Where a privately owned public utility or a public
23 utility that is owned and operated by a homeowners'
24 association is providing sewer service and another utility is
25 providing water service, and the privately owned public
26 utility or the homeowners' association providing sewer
27 service experiences a delinquency in payment, the utility
28 providing water service, upon the request of the
29 homeowners' association or the privately owned public
30 utility providing sewer service to the delinquent account,
31 shall terminate its water service to the customer having the
32 delinquent sewer account.

33 (e) Any termination of water service must comply with
34 all rules and orders of the Public Service Commission:
35 Nothing contained within the rules of the Public Service
36 Commission shall be deemed to require any agents or
37 employees of the water or sewer utility to accept payment at
38 the customer's premises in lieu of discontinuing water service
39 for a delinquent water or sewer bill.

CHAPTER 202

(Com. Sub. for H. B. 4459 - By Delegates Caputo, Perdue, Fleischauer, Butcher, Eldridge, Guthrie, Mahan, Longstreth, Manchin, Marshall and Boggs)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 17, 2010.]

AN ACT to amend and reenact §23-4-10 and §23-4-15 of the Code of West Virginia, 1931, as amended, all relating to Workers' Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death; requiring notice of need to file for certain death benefits; and increasing from one year to two years the time in which a dependent may apply for Workers' Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death.

Be it enacted by the Legislature of West Virginia:

That §23-4-10 and §23-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-10. Classification of death benefits; "dependent" defined.
§23-4-15. Application for benefits.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered by an

employee in the course of and resulting from his or her employment, causes death, and disability is continuous from the date of the injury until the date of death, or if death results from occupational pneumoconiosis or from any other occupational disease, the benefits shall be in the amounts and to the persons as follows:

(a) If there are no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article;

(b) If there are dependents as defined in subdivision (d) of this section, the dependents shall be paid for as long as their dependency continues in the same amount that was paid or would have been paid the deceased employee for total disability had he or she lived. The order of preference of payment and length of dependence shall be as follows:

(1) A dependent widow or widower until death or remarriage of the widow or widower, and any child or children dependent upon the decedent until each child reaches eighteen years of age or where the child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until the child reaches the age of twenty-five years, or if an invalid child, to continue as long as the child remains an invalid. All persons are jointly entitled to the amount of benefits payable as a result of employee's death;

(2) A wholly dependent father or mother until death; and

(3) Any other wholly dependent person for a period of six years after the death of the deceased employee;

(c) If the deceased employee leaves no wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be fifty dollars a month to

35 continue for the portion of the period of six years after the
36 death, determined by the commission, successor to the
37 commission, other private carrier or self-insured employer,
38 whichever is applicable, but no partially dependent person
39 shall receive compensation payments as a result of the death
40 of more than one employee.

41 Compensation under this subdivision and subdivision (b)
42 of this section shall, except as may be specifically provided
43 to the contrary in those subdivisions, cease upon the death of
44 the dependent, and the right to the compensation shall not
45 vest in his or her estate.

46 (d) "Dependent", as used in this chapter, means a widow,
47 widower, child under eighteen years of age, or under twenty-
48 five years of age when a full-time student as provided in this
49 section, invalid child or posthumous child, who, at the time
50 of the injury causing death, is dependent, in whole or in part,
51 for his or her support upon the earnings of the employee,
52 stepchild under eighteen years of age, or under twenty-five
53 years of age when a full-time student as provided in this
54 section, child under eighteen years of age legally adopted
55 prior to the injury causing death, or under twenty-five years
56 of age when a full-time student as provided in this section,
57 father, mother, grandfather or grandmother, who, at the time
58 of the injury causing death, is dependent, in whole or in part,
59 for his or her support upon the earnings of the employee; and
60 invalid brother or sister wholly dependent for his or her
61 support upon the earnings of the employee at the time of the
62 injury causing death; and

63 (e) If a person receiving permanent total disability
64 benefits dies from a cause other than a disabling injury
65 leaving any dependents as defined in subdivision (d) of this
66 section, an award shall be made to the dependents in an
67 amount equal to one hundred four times the weekly benefit
68 the worker was receiving at the time of his or her death and

be paid either as a lump sum or in periodic payments, at the option of the dependent or dependents.

(f) The Insurance Commissioner shall prescribe a form notice to be sent by the commissioner, private carrier or self-insured employer, as applicable, to the dependent with the first payment and six months prior to the last payment of the benefits provided in subsection (e) of this section, that advises the dependent that the benefits will stop as of a date certain. The notice shall also advise the dependent that he or she may be eligible for additional benefits under section fifteen of this article and how to apply for those benefits. The notices shall be written in plain English in a manner that is easily understood by the general public.

§23-4-15. Application for benefits.

(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, within six months from and after the injury or death, as the case may be, and unless filed within the six months period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must also be filed with the commission within six months from and after the death. In case the employee is mentally or physically incapable of filing the application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions of this

20 subsection, the application for compensation shall be made
21 on the form or forms prescribed by the Insurance
22 Commissioner, and filed with the Insurance Commissioner,
23 private carrier or self-insured employer, whichever is
24 applicable, within three years from and after the last day of
25 the last continuous period of sixty days or more during which
26 the employee was exposed to the hazards of occupational
27 pneumoconiosis or within three years from and after a
28 diagnosed impairment due to occupational pneumoconiosis
29 was made known to the employee by a physician and unless
30 filed within the three-year period, the right to compensation
31 under this chapter is forever barred, such time limitation
32 being hereby declared to be a condition of the right and hence
33 jurisdictional, or, in the case of death, the application shall be
34 filed by the dependent of the employee within two years from
35 and after the employee's death, and such time limitation is a
36 condition of the right and hence jurisdictional.

37 (c) To entitle any employee to compensation for
38 occupational disease other than occupational pneumoconiosis
39 under the provisions of this section, the application for
40 compensation shall be made on the form or forms prescribed by
41 the Insurance Commissioner, and filed with the Insurance
42 Commissioner, private carrier or self-insured employer,
43 whichever is applicable, within three years from and after the
44 day on which the employee was last exposed to the particular
45 occupational hazard involved or within three years from and
46 after the employee's occupational disease was made known to
47 him or her by a physician or which he or she should reasonably
48 have known, whichever last occurs, and unless filed within the
49 three-year period, the right to compensation under this chapter
50 shall be forever barred, such time limitation being hereby
51 declared to be a condition of the right and therefore
52 jurisdictional, or, in case of death, the application shall be filed
53 as aforesaid by the dependent of the employee within one year
54 from and after the employee's death, and such time limitation is
55 a condition of the right and hence jurisdictional.

CHAPTER 203

(S. B. 548 - By Senators Tomblin, Mr. President, Stollings and Plymale)

[Passed February 26, 2010; in effect from passage.]
[Approved by the Governor on March 8, 2010.]

AN ACT to extend the time for the governing body of the Board of Education of Boone County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of that county an election to consider a renewal of an existing excess levy for schools, from the third Tuesday of April until the last day in May, 2010 that is not a Saturday, Sunday or legal holiday.

Be it enacted by the Legislature of West Virginia:

§1. Extending the time for the Board of Education of Boone County to meet as levying body for election to consider an excess levy amendment.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, to the contrary, the Board of Education of Boone County, West Virginia, is authorized to extend the time for its meeting as a levying body, setting the levying rate and certifying its actions to the Auditor from the third Tuesday in April until the last day in May, 2010 that is not a Saturday, Sunday or legal holiday, for the purpose of submitting to the voters of Boone County, West Virginia, a renewal of an existing excess levy, said excess levy scheduled to expire on June 30, 2010, so as to extend the excess levy until the end of the fiscal year commencing on July 1, 2014.

CHAPTER 204

(S. B. 445 - By Senators Prezioso, and Kessler)

[Passed March 9, 2010; in effect from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to extend the time for the City Council of Fairmont, Marion County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the city an election for a municipal excess levy for purposes of providing funding for the repair and paving of streets and roadways of the City of Fairmont from March 7-28 and the third Tuesday in April until June 8, 2010.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF FAIRMONT MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the City Council of Fairmont to meet as a levying body for an election authorizing a municipal excess levy to provide funding for the repair and paving of the streets and roadways.

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 City Council for the City of Fairmont, Marion County, West
4 Virginia, is hereby authorized to extend the time for its
5 meeting as a levying body, for the purpose of submitting to

6 the voters of the city of Fairmont the question of authorizing
7 a municipal excess levy for providing funding for the repair
8 and paving of streets and roadways of the city of Fairmont,
9 the levying date shall be set between March 7 - 28 and the
10 third Tuesday in April until June 8, 2010.

CHAPTER 205

(Com. Sub. for H. B. 4039 - By Delegates Varner and Ferro)

[Passed March 12, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact sections 1, 2, 3, 4, and 5, chapter 171, Acts of the Legislature, regular session, 1965, all relating to the Marshall County Park and Recreation Board; and permitting the Marshall County Commission to increase the board's membership.

Be it enacted by the Legislature of West Virginia:

That sections 1, 2, 3, 4 and 5 chapter 171, Acts of the Legislature, regular session, 1965, be amended and reenacted to read as follows:

§1. Marshall County Commission Authorized to Create a Park and Recreation Board.
§2. Board a Body Corporate; Perpetual Existence; Right to Receive and Expend Moneys.
§3. Members; Appointment; Term; Residency; Vacancy.
§4. Oath of Members; Election of Officers; Quorum; Place of Business.
§5. Contracts; Legal Actions; General Powers; Rules and Regulations.

§1. Marshall County Commission Authorized to Create a Park and Recreation Board.

The Marshall County Commission is authorized to create by order a park and recreation board, to be known as the "Marshall County Park and Recreation Board".

§2. Board a Body Corporate; Perpetual Existence; Right to Receive and Expend Moneys.

The board is a public corporate board, with perpetual existence and a corporate seal. The board may receive moneys from the county commission and may expend the same for the purposes enumerated in section five. The board may receive and expend any gift, grant, donation, bequest or devise from sources other than the public funds of Marshall County.

§3. Members; Appointment; Term; Residency; Vacancy.

The board shall consist of at least five, but no more than nine members who shall be appointed by the Marshall County Commission. The term of office of each board member is for four years and may continue to serve until their successors have been appointed and qualified. The Marshall County Commission shall by order fix the date on which the term of office of board membership shall commence. No one may be appointed a member of the board who is not a bona fide resident of Marshall County. Any board member who ceases to be a bona fide resident of Marshall County is disqualified and his or her office becomes vacant. When a vacancy occurs on the board by reason of the change of residence, resignation, or death of a member, the Marshall County Commission shall appoint a successor to complete the unexpired term of that member.

§4. Oath of Members; Election of Officers; Quorum; Place of Business.

After appointment, the members of the board shall qualify by taking and filing with the clerk of the Marshall

County Commission the oath prescribed by law for public officials. One of the members of the board shall be elected as president, another as vice president, and another as secretary. A majority of the board members shall constitute a quorum for the transaction of business. The board shall maintain an office at any place in the county which it may designate.

§5. Contracts; Legal Actions; General Powers; Rules and Regulations.

The board may:

(1) Enter into contracts;

(2) Bring any and all necessary legal actions; and

(3) Exercise all the necessary powers and authority to manage and control park and recreation areas in Marshall County, including the right to make rules concerning the management and control of parks and recreation areas and to enforce those rules.

CHAPTER 206

(H. B. 4309 - By Delegate Michael)

[Passed February 23, 2010; in effect from passage.]
[Approved by the Governor on March 3, 2010.]

AN ACT to authorize the Town of Moorefield, the Hardy County Commission, and Hardy County's largest corporate user of public wastewater facilities to construct and maintain a state of the art regional wastewater treatment plant, transmission lines

and collection facilities for the purpose of collecting, transporting and treating the wastewater from the Town of Moorefield and the unincorporated areas of Hardy County; authorizing the town, the county commission and Hardy County's largest corporate user of public wastewater facilities to create the Moorefield/Hardy County Wastewater Authority to assume ownership of the facilities; membership; powers and duties; board of directors; bylaws; rules; support, maintenance and operation; funds; and severability.

Be it enacted by the Legislature of West Virginia:

MOOREFIELD/HARDY COUNTY WASTEWATER AUTHORITY.

§1. Town of Moorefield, Hardy County Commission and Hardy County's largest corporate user of public wastewater facilities authorized to create and join the Moorefield/Hardy County Wastewater Authority; powers and duties generally.
§2. Board of directors; appointment; officers; procedure; bylaws; rules.
§3. Same–A body corporate.
§4. Title to property.
§5. Support, maintenance and operation.
§6. Deposit and disbursement of funds.
§7. Workers' compensation; social security and public employees' retirement benefits for employees.
§8. Effect of future amendments of general law.
§9. Severability.

§1. Town of Moorefield, Hardy County Commission and Hardy County's largest corporate user of public wastewater facilities authorized to create and join the Moorefield/Hardy County Wastewater Authority; powers and duties generally.

In recognition of the mutual interest of the Town of Moorefield, the county commission of Hardy County, and Hardy County's largest corporate wastewater producer in meeting increasingly stringent wastewater discharge standards, the Town of Moorefield, the county commission of Hardy County, and Hardy County's largest corporate user of public wastewater facilities are hereby authorized and

empowered to create a joint endeavor of the three entities and join an authority to be known as the Moorefield/Hardy County Wastewater Authority to own and operate a state of the art regional wastewater treatment plant, transmission lines, collection facilities and associated appurtenances to provide wastewater treatment service for the Town of Moorefield and unincorporated areas of the county. The authority shall have the power and authority to own and operate a wastewater treatment plant, collection facilities, transmission system, and associated appurtenances; to treat and contract for the treatment of wastewater and to provide for the proper maintenance, repair and upgrade to the wastewater system, including the power of eminent domain, to buy, sell or lease real and personal property and to take all other actions as may be necessary to carry out such purposes. The borrowing of money and the notes, bonds and security interests evidencing any borrowing shall be authorized by resolution approved by the authority, shall bear the date or dates, and shall mature at the time or times, in the case of any bonds, as the resolution or resolutions may provide. The notes, bonds and security interests shall bear interest at such rate or rates, be in such denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms or conditions of redemption as the resolution or resolutions may provide: *Provided,* That every issue of notes, security interests and bonds shall be limited obligations of the authority payable solely out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes, security interests or bonds pledging particular revenues. The notes, security interests and bonds issued by the authority shall be and hereby are made negotiable instruments under the provisions of article eight, chapter forty-six of the Code of West Virginia, 1931, as amended, subject only to the provisions of the notes, security interests or bonds for registration.

§2. Board of directors; appointment; officers; procedures; bylaws; rules.

There shall be a board of directors, consisting of five members. One member shall be a sitting member of the Town Council selected by the Town Council; one member shall be a sitting member of the county commission selected by the county commission; one member shall be a representative of Hardy County's largest corporate user of public wastewater facilities and shall be appointed by such corporate user of public wastewater facilities; one member shall be appointed by the Town Council with unanimous consent of the county commission and Hardy County's largest corporate user of public wastewater facilities; and, one member shall be appointed by the county commission with unanimous approval of the Town Council and Hardy County's largest corporate user of public wastewater facilities. No later than July 1, 2010, the Town of Moorefield and the county commission shall each appoint one member of the board of directors for a term of three years; the Town Council of the Town of Moorefield and the county commission of Hardy County shall each select one of their members for a term of two years; and, Hardy County's largest corporate user of public wastewater facilities shall appoint one member for a term of five years, all in the manner set forth herein. Although members shall serve from the date of appointment, terms of office shall expire as if said terms had commenced on July 1, 2010. Each successor member of the board of directors shall be appointed by the respective entity that appointed the predecessor member in the same manner as the predecessor was appointed and each successor member shall be appointed for a term of three years, except that the terms of the Town Council person and the county commissioner shall be for a period of two years, and provided further, that any person appointed to fill a vacancy occurring before the expiration of the term shall

serve only for the unexpired portion thereof. Any member of the board shall be eligible for reappointment and the appointing entity which appointed the member may remove that member at any time for any reason. There shall be an annual meeting of the board of directors on the second Monday in July of each year and a monthly meeting on the day in each month which the authority may designate in its bylaws. A special meeting may be called by the president or any two members of the board and shall be held only after all of the directors are given notice thereof in writing. At all meetings three members shall constitute a quorum and at each annual meeting of the board of directors it shall elect, from its membership, a president, a vice president, a secretary and a treasurer: *Provided,* That a member may be elected both secretary and treasurer. The board of directors shall adopt those bylaws and rules which it considers necessary for its own guidance and for the administration, supervision and protection of the authority and all of the property belonging to the authority. The board of directors has all the powers necessary, convenient and advisable for the proper operation, equipment and management of the authority; and except as otherwise especially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed upon the cooperating entities by article thirteen-d, chapter sixteen of the Code of West Virginia,1931, as amended. The qualifications of the directors shall be determined by each participating entity.

§3. Same--A body corporate.

The Moorefield/Hardy County Wastewater Authority hereby created shall be a public corporation and governmental instrumentality. It may contract and be contracted with, sue and be sued, plead and be impleaded and shall have and use a common seal.

§4. Title to property.

The title to all property, both real and personal, that will provide wastewater service to the parties making up the authority in connection with the operation by it shall vest in the board of directors of the Moorefield/Hardy County Wastewater Authority hereby created.

§5. Support, maintenance and operation.

All income realized by the operation of the authority from the collection, transmission and treatment of wastewater or from any other sources shall be used by the board of directors for the support of the Moorefield/Hardy County Wastewater Authority.

§6. Deposit and disbursement of funds.

All money collected by the Moorefield/Hardy County Wastewater Authority shall be deposited in a special account for the Moorefield/Hardy County Wastewater Authority, and shall be disbursed by the authority for the purpose of operating a public wastewater system.

§7. Workers' compensation; social security and public employees' retirement benefits for employees.

All employees of the Moorefield/Hardy County Wastewater Authority hereby created shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the Code of West Virginia, 1931, as amended.

§8. Effect of future amendments of general law.

Amendments to article twenty-three, chapter eight of the Code of West Virginia, 1931, as amended, and other general laws shall control this act only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this act is clear and unmistakable.

§9. Severability.

If any provision hereof is held invalid, such invalidity does not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2010

CHAPTER 1

(S.B. 1014 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 June 30, 2010, to the Governor's Office - Office of Economic Opportunity Community Services, fund 8799, fiscal year 2010, organization 0100, and to Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2010, organization 0323, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2010 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 8799, fiscal year 2010, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

338-Governor's Office-
Office of Economic Opportunity
Community Services

Fund 8799 FY 2010 Org 0100

	Activity	Federal Funds
1 2 Federal Economic Stimulus	891	$ 4,000,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2010, to fund 8749, fiscal year 2010, organization
4 0323, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

340-Workforce West Virginia-
Workforce Investment Act

Fund 8749 FY 2010 Org 0323

	Activity	Federal Funds
1 2 Federal Economic Stimulus	891	$ 1,000,000

The purpose of this supplementary appropriation bill is to supplement and amend by increasing existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2010.

CHAPTER 2

(S. B. 1015 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 Agriculture, fund 0131, fiscal year 2010, organization 1400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2010, organization 1400, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, to the Department of Education - State Department of Education, fund 0313, fiscal year 2010, organization 0402, to the Department of Education - State Department of Education - Aid for Exceptional Children, fund 0314, fiscal year 2010, organization 0402, and to the Department of Military Affairs and Public Safety - Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2010, organization 0606, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature, the Executive Budget Document, dated January 13, 2010, containing a

statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2009, and further included the estimate of revenues for the fiscal year 2010, less net appropriation balances forwarded and regular appropriations for the fiscal year 2010; 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 June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 0131, fiscal year 2010, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10–Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2010 Org 1400

			Activity	General Revenue Funds
1	7	Unclassified - Surplus (R)	097	$ 1,000,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Surplus(fund 0131, activity 097) at the

close of fiscal year 2010 is hereby reappropriated for expenditure during fiscal year 2011.

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 0132, fiscal year 2010, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

11–West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2010 Org 1400

		Activity	General Revenue Funds
5	Soil Conservation Projects -		
5a	Surplus (R)	269	$ 5,225,000

Any unexpended balance remaining in the appropriation for Soil Conservation Projects - Surplus(fund 0132, activity 269) at the close of fiscal year 2010 is hereby reappropriated for expenditure during fiscal year 2011.

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 0256, fiscal year 2010, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

34–West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2010 Org 0307

	Activity	General Revenue Funds
6 Unclassified - Surplus	097	$ 100,000

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 0313, fiscal year 2010, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

45–State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2010 Org 0402

	Activity	General Revenue Funds
12 Tax Assessment Errors - Surplus	065	$ 395,317

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 0314, fiscal year 2010, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

46–State Department of Education-
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2010 Org 0402

	Activity	General Revenue Funds
7a Unclassified - Surplus	097	$ 50,000

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 0443, fiscal year 2010, organization 0606, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

69–Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2010 Org 0606

		Activity	General Revenue Funds
1 4	Unclassified - Surplus	097	$ 50,000

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, increase and add items of appropriations
4 in the aforesaid accounts for the designated spending units
5 for expenditure during the fiscal year 2010.

CHAPTER 3

(S. B. 1016 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the WV Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2010, organization 0907, all supplementing and amending the appropriation for the fiscal year ending June 30, 2010.

WHEREAS, The Governor has established that there remains an unappropriated balance in the WV Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2010, organization 0907, available for expenditure during the fiscal year ending June 30, 2010 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 8520, fiscal year 2010, organization 0907, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

236-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2010 Org 0907

			Activity		Other Funds
1	1	Unclassified - Surplus	096	$	13,000

2 The purpose of this supplementary appropriation bill is
3 to supplement and amend by increasing an existing item of
4 appropriation in the aforesaid account for the designated
5 spending unit for expenditure during fiscal year 2010.

CHAPTER 4

(S. B. 1017- By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2010, organization 0803, for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated March 8, 2010 setting forth therein the cash balances and investments as of July 1, 2009, and further included the estimate of revenues for the fiscal year 2010, less net appropriation balances forwarded and regular appropriations for the fiscal year 2010; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund, fund 9017, fiscal year 2010, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

93–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2010 Org 0803

			Activity	State Road Fund
1	2	Maintenance	237	$20,000,000

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, and increase an item of appropriation in
4 the aforesaid account for the designated spending unit for
5 expenditure during the fiscal year ending June 30, 2010.

CHAPTER 5

(S. B. 1018 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 2010, organization 0705, to the Division of Finance, fund 2208, fiscal year 2010, organization 0209, to a new item of appropriation designated to the Public Defender Services, fund 2422, fiscal year 2010, organization 0221, and to the Division of Corrections - Correctional Units, fund 6283, fiscal year 2010, organization 0608, by supplementing and amending Chapter 10, Acts of the Legislature, Regular Session, 2009, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2010, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July 1, 2009, and further included the estimate of revenue for the fiscal year 2010, less regular appropriations for the fiscal year 2010; 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 June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 7208, fiscal year 2010, organization 0705, be supplemented and amended to hereafter read as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

268–Lottery Commission -
Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2010 Org 0705

	Activity	Lottery Funds
Teachers' Retirement Savings Realized	095	6,688,000
Other Post Employee Benefits-Transfer	289	0
Unclassified - Transfer	482	64,900,000
School Access Safety	978	0
Total		$ 71,588,000

From the above appropriation for Unclassified - Transfer (fund 7208, activity 482) $62,900,000 shall be transferred to the General Revenue Fund and $2,000,000 shall be transferred to the Underground Storage Tank Insurance Fund (fund 3218, org 0313).

The above appropriation for Teachers' Retirement Savings Realized (fund 7208, activity 095) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044, org 0201).

And, That the total appropriation for the fiscal year ending June 30, 2010, to fund 2208, fiscal year 2010, organization 0209, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

271-Division of Finance

Fund 2208 FY 2010 Org 0209

Enterprise Resource Planning System Planning Project	087	$ 25,000,000

3 And, That Chapter 10, Acts of the Legislature, Regular
4 Session, 2009, known as the Budget Bill, be supplemented
5 and amended by adding to Title II, section 5 thereof, the
6 following:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

271a-Public Defender Services

(WV Code Chapter 29)

Fund 2422 FY 2010 Org 0221

1 1 Appointed Counsel Fees (R) 788 $11,000,000

2 Any unexpended balance remaining in the appropriation
3 for Appointed Counsel Fees (fund 2422, activity 788) at the
4 close of the fiscal year 2010 is hereby reappropriated for
5 expenditure during the fiscal year 2011.

6 And, That the total appropriation for the fiscal year ending
7 June 30, 2010, to fund 6283, fiscal year 2010, organization
8 0608, be supplemented and amended by adding a new item
9 of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

278-Division of Corrections - Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 6283 FY 2010 Org 0608

1	1 Capital Outlay and Maintenance (R) .	755	$ 5,375,000

The purpose of this supplementary appropriation bill is to supplement, amend, add a new item and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2010.

CHAPTER 6

(S. B. 1019 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to a new item of appropriation designated to the Governor's Office - ARRA NTIA Broadband Infrastructure Grant Fund, fund 8717, fiscal year 2010, organization 0100, to the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2010, organization 1400, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - Disability Determination Services, fund 8890, fiscal year 2010, organization 0932, and to the Department of Health and Human Resources - Division of Health - Central Office, fund 8802, fiscal year 2010, organization 0506, by supplementing and amending Chapter 10, Acts of the Legislature, Regular Session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2010, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 10, Acts of the Legislature, Regular Session, 2009, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

282a-Governor's Office -
ARRA NTIA Broadband Infrastructure Grant Fund

(WV Code Chapter 5)

Fund 8717 FY 2010 Org 0100

		Activity	Other Funds
1	Federal Economic Stimulus	891	$10,000,000

And, That the total appropriation for the fiscal year ending June 30, 2010, to the fund 8896, fiscal year 2010, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

289-Department of Agriculture -
Land Protection Authority

Fund 8896 FY 2010 Org 1400

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 440,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2010, to fund 8890, fiscal year 2010,
4 organization 0932, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF EDUCATION AND THE ARTS

310-State Board of Rehabilitation -
Division of Rehabilitation Services -
Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2010 Org 0932

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 3,268,219

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2010, to fund 8802, fiscal year 2010,
4 organization 0506, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

313-Division of Health -
Central Office

(WV Code Chapter 16)

Fund 8802 FY 2010 Org 0506

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 7,500,000

2 The purpose of this supplementary appropriation bill is to
3 supplement, amend, add a new item and increase existing
4 items of appropriation in the aforesaid accounts for the
5 designated spending units for expenditure during the fiscal
6 year 2010.

CHAPTER 7

(S. B. 1020 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 June 30, 2011, to Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2011, organization 0323, by supplementing and amending the appropriation for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 8749, fiscal year 2011, organization 0323, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

341-WorkForce West Virginia-
Workforce Investment Act

Fund 8749 FY 2011 Org 0323

	Activity	Federal Funds
1 2 Federal Economic Stimulus	096	$ 5,000,000

2 The purpose of this supplementary appropriation bill is
3 to supplement and amend by increasing an existing item of
4 appropriation in the aforesaid account for the designated
5 spending unit for expenditure during the fiscal year 2011.

CHAPTER 8

(S. B. 1021 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 June 30, 2011, to the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2011, organization 1400, to the Department of Commerce - Division of Natural Resources, fund 8707, fiscal year 2011, organization 0310, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services - Disability Determination Services, fund 8890, fiscal year 2011, organization 0932, to a new item of appropriation designated to the Department of Revenue - Insurance Commissioner - Qualified High Risk Pool, fund 8790, fiscal year 2011, organization 0704, and to the Department of Transportation - State Rail Authority, fund 8733, fiscal year 2011, organization

0804, by supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the Budget Bill.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 8896, fiscal year 2011, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

EXECUTIVE

289-Department of Agriculture - Land Protection Authority

Fund 8896 FY 2011 Org 1400

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 440,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 8707, fiscal year 2011,
4 organization 0310, be supplemented and amended by
5 increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF COMMERCE

297-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2011 Org 0310

	Activity	Other Funds
1 1 Unclassified - Total	096	$ 1,405,774

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 8890, fiscal year 2011,
4 organization 0932, be supplemented and amended by
5 increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF EDUCATION AND THE ARTS

311-State Board of Rehabilitation -
Division of Rehabilitation Services -
Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2011 Org 0932

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 3,268,219

2 And, That Chapter 8, Acts of the Legislature, Regular
3 Session, 2010, known as the Budget Bill, be supplemented
4 and amended by adding to Title II, section six thereof, the
5 following:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF REVENUE

328a-Insurance Commissioner - Qualified High Risk Pool

Fund 8790 FY 2011 Org 0704

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 7,700,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 8733, fiscal year 2011,
4 organization 0804, be supplemented and amended to read as
5 follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF TRANSPORTATION

331-State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2011 Org 0804

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 1,000,000

2 The purpose of this supplementary appropriation bill is
3 to supplement, amend, add a new item and increase existing
4 items of appropriation in the aforesaid accounts for the
5 designated spending units for expenditure during the fiscal
6 year 2011.

CHAPTER 9

(S. B. 1022 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the Higher Education Policy Commission - System - Tuition Fee Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account, fund 4903, fiscal year 2011, organization 0442, to the WV Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2011, organization 0907, and to the Board of Medicine, fund 9070, fiscal year 2011, organization 0945, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Higher Education Policy Commission - System - Tuition Fee Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account, fund 4903, fiscal year 2011, organization 0442, in the WV Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2011, organization 0907, and in the Board of Medicine, fund 9070, fiscal year 2011, organization 0945, available for expenditure during the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 4903, fiscal year 2011, organization 0442, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

HIGHER EDUCATION

230-Higher Education Policy Commission -
System -
Tuition Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2011 Org 0442

			Activity	Other Funds
1	1	Debt Service	040	$ 5,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 8520, fiscal year 2011,
4 organization 0907, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

238-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2011 Org 0907

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 100,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2011, to fund 9070, fiscal year 2011,
4 organization 0945, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

248-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2011 Org 0945

			Activity	Other Funds
1	1	Unclassified - Total	096	$ 180,000

2 The purpose of this supplementary appropriation bill is
3 to supplement, amend and increase existing items of
4 appropriation in the aforesaid accounts for the designated
5 spending units for expenditure during the fiscal year 2011.

CHAPTER 10

(S. B. 1023 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

AN ACT supplementing and amending appropriations from the State Road Fund by decreasing an existing item of appropriation from the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, and adding a new item of appropriation to be designated as the Department of Transportation - Office of Administrative Hearings, fund 9027, fiscal year 2011, organization 0808, by supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the Budget Bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund, fund 9017, fiscal year 2011, organization 0803, be

supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2011 Org 0803

			Activity	State Road Fund
1	9	General Operations	277	$ 1,400,000

2 And, That Chapter 8, Acts of the Legislature, Regular
3 Session, 2010, known as the Budget Bill, be supplemented
4 and amended by adding to Title II, section 2 thereof, the
5 following:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

94a–Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2011 Org 0808

			Activity	State Road Fund
1	1	Unclassified - Total	096	$ 1,400,000

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, and decrease an existing item of
4 appropriation in the budget act; and provide for a new item
5 of appropriation to be established therein to appropriate funds
6 for the designated spending units for expenditure during the
7 fiscal year ending June 30, 2011.

CHAPTER 11

(S. B. 1024 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on May 24, 2010.]

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 Senate, fund 0165, fiscal year 2011, organization 2100, to the House of Delegates, fund 0170, fiscal year 2011, organization 2200, to Joint Expenses, fund 0175, fiscal year 2011, organization 2300, to a new item of appropriation designated to the Department of Administration - Travel Management, fund 0615, fiscal year 2011, organization 0215, to the Department of Administration - Real Estate Division, fund 0610, fiscal year 2011, organization 0233, to the Department of Commerce - West Virginia Development

Office, fund 0256, fiscal year 2011, organization 0307, to the Department of Education - State Department of Education, fund 0313, fiscal year 2011, organization 0402, to the Department of Education - State Board of Education - Vocational Division, fund 0390, fiscal year 2011, organization 0402, to the Department of Education and the Arts - Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2011, organization 0431, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2011, organization 0432, to the Department of Education and the Arts - Library Commission, fund 0296, fiscal year 2011, organization 0433, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2011, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2011, 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 2011, organization 0601, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 0453, fiscal year 2011, organization 0612, and to Higher Education - Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2011, organization 0441, by supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated May 13, 2010, setting forth therein the cash balance as of July 1, 2009 and further included the estimate of revenues for the fiscal year 2010, less net appropriation balances forwarded and regular appropriations for the fiscal year 2010, and an estimate of revenues for the fiscal year 2011, 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 June 30, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 0165, fiscal year 2011, organization 2100, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

LEGISLATIVE

1-Senate

Fund 0165 FY 2011 Org 2100

			Activity	General Revenue Funds
1	1	Compensation of Members (R)	003	$ 1,010,000
2	2	Compensation and Per Diem of		
3	3	Officers and Employees (R)	005	3,003,210
4	4	Employee Benefits (R)	010	597,712
5	5	Current Expenses and		
6	6	Contingent Fund (R)	021	561,392
7	7	Repairs and Alterations (R)	064	210,410
8	8	Computer Supplies (R)	101	40,000
9	9	Computer Systems (R)	102	150,000
10	10	Printing Blue Book (R)	103	150,000
11	11	Expenses of Members (R)	399	700,000
12	12	BRIM Premium (R)	913	29,482
13	13	Total		$ 6,452,206

The appropriations for the Senate for the fiscal year 2010 are to remain in full force and effect and are hereby reappropriated to June 30, 2011 with the exception of fund 0165, fiscal year 2010, activity 005 ($230,921) which shall expire on June 30, 2010. Any balances so reappropriated may be transferred and credited to the fiscal year 2011 accounts.

Upon the written request of the Clerk of the Senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.

The Clerk of the Senate, with the written approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the written approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the auditor for

the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies for each classified and approved high school and junior high or middle school and one copy for each elementary school within the state.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0170, fiscal year 2011, organization 2200, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

LEGISLATIVE

2-House of Delegates

Fund 0170 FY 2011 Org 2200

	Activity	General Revenue Funds
1 Compensation of Members (R)	003	$ 3,000,000
2 Compensation and Per Diem		
3 of Officer and Employees (R) ...	005	700,000
4 Current Expenses and		
5 Contingent Fund (R)	021	3,954,031
6 Expenses of Members (R)	399	1,700,000
7 BRIM Premium	913	50,000
8 Total		$ 9,404,031

9 The appropriations for the House of Delegates for the
10 fiscal year 2010 are to remain in full force and effect and are
11 hereby reappropriated to June 30, 2011 with the exception of
12 fund 0170, fiscal year 2010, activity 021 ($336,565) which
13 shall expire on June 30, 2010. Any balances so
14 reappropriated may be transferred and credited to the fiscal
15 year 2011 accounts.

16 Upon the written request of the Clerk of the House of
17 Delegates, the auditor shall transfer amounts between items
18 of the total appropriation in order to protect or increase the
19 efficiency of the service.

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

The Speaker of the House of Delegates, upon approval of the House committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker, with the approval of the House committee on rules, during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker, with the approval of the House committee on rules, and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0175, fiscal year 2011, organization 2300, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

LEGISLATIVE

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2011 Org 2300

	Activity	General Revenue Funds
Joint Committee on Government and Finance (R)	104	$ 6,758,015
Legislative Printing (R)	105	760,000
Legislative Rule-Making Review Committee (R)	106	147,250
Legislative Computer System (R)	107	902,500
Joint Standing Committee on Education (R)	108	83,600
BRIM Premium (R)	913	20,900
Total		$ 8,672,265

The appropriations for the joint expenses for the fiscal year 2010 are to remain in full force and effect and are hereby reappropriated to June 30, 2011 with the exception of fund 0175, fiscal year 2010, activity 104 ($310,375) which shall expire on June 30, 2010. Any balances so reappropriated may be transferred and credited to the fiscal year 2011 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175,

activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs.

And, That chapter 8, Acts of the Legislature, regular session, 2010, known as the Budget Bill, be supplemented and amended by adding to Title II, section 1 thereof, the following:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

22a–Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2011 Org 0215

		Activity	General Revenue Funds
1	Unclassified - Total	096	$ 1,800,000

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0610, fiscal year 2011, organization 0233, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

31–Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2011 Org 0233

		Activity	General Revenue Funds
1	Unclassified - Total	099	$ 366,393

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0256, fiscal year 2011, organization 0307, be supplemented and amended by adding a new item and increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

35–West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2011 Org 0307

		Activity	General Revenue Funds
7	Unclassified - Total	099	$ 300,000
43a	4-H Camp Improvements	941	650,000

3 And, That the total appropriation for the fiscal year
4 ending June 30, 2011, to fund 0313, fiscal year 2011,
5 organization 0402, be supplemented and amended by
6 increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

46–State Board of Education-

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

		Activity	General Revenue Funds
1	19 English as a Second Language	528	$ 350,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 0390, fiscal year 2011, organization
4 0402, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

49–State Board of Education-
Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2011 Org 0402

		Activity	General Revenue Funds
1	13 GED Testing (R)	339	$ 100,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 0294, fiscal year 2011, organization
4 0431, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

52–Department of Education and the Arts-
Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2011 Org 0431

		Activity	General Revenue Funds
1	1 Unclassified (R)	099	$ 100,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 0293, fiscal year 2011, organization
4 0432, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

53–Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2011 Org 0432

		Activity	General Revenue Funds
1 4	Unclassified (R)	099	$ 105,576

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 0296, fiscal year 2011, organization
4 0433, be supplemented and amended by adding a new item
5 of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

54–Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2011 Org 0433

	Activity	General Revenue Funds
5a Grants to Public Libraries	182	$ 250,000

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0407, fiscal year 2011, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61–Division of Health-Central Office

(WV Code Chapter 16)

Fund 0407 FY 2011 Org 0506

	Activity	General Revenue Funds
32 HealthRight Free Clinics	727	$ 750,000

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0403, fiscal year 2011, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

65--Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2011 Org 0511

		Activity	General Revenue Funds
1 4	Unclassified	099	$ 200,000
2 20	Title XIX Waiver for Seniors	533	$ 5,500,000
3 36	Grants for Licensed Domestic		
4 37	Violence Programs and		
5 38	Statewide Prevention	750	500,000

6 From the above appropriation for Unclassified (fund 0403,
7 activity 099), up to $200,000 is for an At-Risk Youth
8 Program which may only be used to match the Federal
9 Promise Neighborhood Grant Program.

10 And, That the total appropriation for the fiscal year ending
11 June 30, 2011, to fund 0430, fiscal year 2011, organization
12 0601, be supplemented and amended by adding a new item
13 of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

66–Department of Military Affairs and Public Safety-Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2011 Org 0601

	Activity	General Revenue Funds
3a WV Fire and EMS Survivor Benefit (R)	939	$ 100,000

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0453, fiscal year 2011, organization 0612, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT MILITARY AFFAIRS AND PUBLIC SAFETY

73–West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2011 Org 0612

			Activity	General Revenue Funds
1	1	Personal Services	001	$ 670,152
2	3	Employee Benefits	010	152,404
3	5	Unclassified	099	200,404
4	6	Vehicle Purchase	451	365,400
5	8	Communications and		
6	9	Other Equipment(R)	558	391,104
7	10	Trooper Retirement Fund	605	126,538

8 And, That the total appropriation for the fiscal year ending
9 June 30, 2011, to fund 0589, fiscal year 2011, organization
10 0441, be supplemented and amended by increasing an
11 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

91–Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2011 Org 0441

			Activity	General Revenue Funds
1	1	Unclassified (R)	099	$ 600,000

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, increase and add items of appropriations
4 in the aforesaid accounts for the designated spending units
5 for expenditure during the fiscal year 2011.

CHAPTER 12

(S. B. 1010 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 18, 2010; in effect from passage.]
[Approved by the Governor on June 3, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9c, relating to creating a fund for the transfer of moneys from the Attorney General to the Department of Health and Human Resources.

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 §9-2-9c, to read as follows:

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

§9-2-9c. Behavioral Mental Health Services Fund created.

1 There is created in the State Treasury a special revenue
2 account to be designated the "Behavioral Mental Health
3 Services Fund" which is an interest-bearing account that may

be invested and retain all earnings. On or before August 1, 2010, the State Treasurer shall make a one-time transfer of $14,750,000 from Fund 1509 – Consumer Protection Recovery Fund, administered by the Attorney General, into the Behavioral Mental Health Services Fund. All moneys transferred to this fund shall be expended in accordance with the settlement provisions of *State of West Virginia v. Eli Lilly and Company, Inc.,* United States District Court of the Eastern District of New York, Civil Action No. 06-CV-5826. Nothing in this article may be construed to mandate additional funding or to require any additional appropriation by the Legislature.

CHAPTER 13

(S. B. 1005 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 14, 2010; in effect ninety days from passage.]
[Approved by the Governor on June 3, 2010.]

AN ACT to amend and reenact §61-7-10 of the Code of West Virginia, 1931, as amended, relating to the unlawful transfer of firearms or ammunition to prohibited persons; increasing fines and penalties for certain offenses; creating felony offenses relating to the transfer of firearms or ammunition under certain circumstances; prohibiting persons other than law-enforcement officers acting in their official capacity from soliciting others to violate state and federal firearms laws; distinguishing between firearms and other deadly weapons for criminal offense purposes; and modifying and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-7-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS

§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

1 (a) A person may not publicly display and offer for rent
2 or sale, or, where the person is other than a natural person,
3 knowingly permit an employee thereof to publicly display
4 and offer for rent or sale, to any passersby on any street, road
5 or alley, any deadly weapon, machine gun, submachine gun
6 or other fully automatic weapon, any rifle, shotgun or
7 ammunition for same.

8 (b) Any person who violates the provisions of
9 subsections (a) or (c) of this section shall be guilty of a
10 misdemeanor, and, upon conviction thereof, shall be fined
11 not more than five thousand dollars or shall be confined in
12 the county jail for not more than one year, or both fined and
13 confined, except that where the person violating the
14 provisions of said subsections is other than a natural person,
15 such person shall be fined not more than ten thousand
16 dollars.

17 (c) A person may not knowingly sell, rent, give or lend,
18 or, where the person is other than a natural person,
19 knowingly permit an employee thereof to knowingly sell,
20 rent, give or lend, any deadly weapon other than a firearm to
21 a person prohibited from possessing a deadly weapon other
22 than a firearm by any provision of this article.

23 (d) a person may not knowingly sell, rent, give or lend,
24 or where the person is other than a natural person, knowingly
25 permit an employee thereof to knowingly sell, rent give or
26 lend a firearm or ammunition to a person prohibited by any
27 provision of this article or the provisions of 18 U. S. C.§922.

28 (e) Any person who violates any of the provisions of
29 subsection (d) of this section is guilty of a felony, and, upon
30 conviction thereof, shall be fined not more than $100,000
31 imprisoned in a state correctional facility for a definite term
32 of years of not less than three years nor more than ten years,
33 or both fined and imprisoned, except that where the person
34 committing an offense punishable under this subsection is
35 other than a natural person, such person shall be fined not
36 more than $250,000.

37 (f) Any person who knowingly solicits, persuades,
38 encourages or entices a licensed dealer or private seller of
39 firearms or ammunition to transfer a firearm or ammunition
40 under circumstances which the person knows would violate
41 the laws of this state or the United States is guilty of a felony.
42 Any person who willfully procures another to engage in
43 conduct prohibited by this subsection shall be punished as a
44 principal. This subsection does not apply to a law-
45 enforcement officer acting in his or her official capacity.
46 Any person who violates the provisions of this subsection is
47 guilty of a felony, and upon conviction thereof, shall be fined
48 not more than $5,000, imprisoned in a state correctional
49 facility for a definite term or not less than one year nor more
50 than five years, or both fined and imprisoned.

CHAPTER 14

(S. B. 1004 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 14, 2010; in effect ninety days from passage.]
[Approved by the Governor on June 3, 2010.]

AN ACT to repeal §27-1A-12 of the Code of West Virginia, 1931, as amended; to repeal §27-2-1a and §27-2-1b of said code; to amend and reenact §9-4C-1 and §9-4C-5 of said code; to amend and reenact §9-5-11c of said code; to amend and reenact §11-27-10 and §11-27-11 of said code; to amend and reenact §16-1-4 of said code; to amend and reenact §16-2D-2 and §16-2D-5 of said code; to amend and reenact §16-5F-2 of said code; to amend and reenact §16-5O-2 of said code; to amend and reenact §16-22-1 and §16-22-2 of said code; to amend and reenact §16-29A-3 of said code; to amend and reenact §16-30-7 and §16-30-24 of said code; to amend and reenact §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code; to amend and reenact §27-1A-1, §27-1A-4 and §27-1A-6 of said code; to amend and reenact §27-2-1 of said code; to amend and reenact §27-2A-1 of said code; to amend and reenact §27-5-9 of said code; to amend and reenact §27-9-1 of said code; to amend and reenact §27-12-1 of said code; to amend and reenact §29-15-1, §29-15-5 and §29-15-6 of said code; to amend and reenact §44A-1-1 and §44A-1-2 of said code; and to amend and reenact §49-4A-6 of said code, all relating to intellectually disabled persons; revising nomenclature in favor of the term "intellectual disability"; renaming facilities, operations and references accordingly; removing antiquated code sections; revising definitions; providing that previous terminology will

control in certain situations; and updating certain statutory provisions to reflect prior changes occurring elsewhere in the code.

Be it enacted by the Legislature of West Virginia:

That §27-1A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §27-2-1a and §27-2-1b of said code be repealed; that §9-4C-1 and §9-4C-5 of said code be amended and reenacted; that §9-5-11c of said code be amended and reenacted; that §11-27-10 and §11-27-11 of said code be amended and reenacted; that §16-1-4 of said code be amended and reenacted; that §16-2D-2 and §16-2D-5 of said code be amended and reenacted; that §16-5F-2 of said code be amended and reenacted; that §16-5O-2 of said code be amended and reenacted; that §16-22-1 and §16-22-2 of said code be amended and reenacted; that §16-29A-3 of said code be amended and reenacted; that §16-30-7 and §16-30-24 of said code be amended and reenacted; that §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code be amended and reenacted; that §27-1A-1, §27-1A-4 and §27-1A-6 of said code be amended and reenacted; that §27-2-1 of said code be amended and reenacted; that §27-2A-1 of said code be amended and reenacted; that §27-5-9 of said code be amended and reenacted; that §27-9-1 of said code be amended and reenacted; that §27-12-1 of said code be amended and reenacted; that §29-15-1, §29-15-5 and §29-15-6 of said code be amended and reenacted; that §44A-1-1 and §44A-1-2 of said code be amended and reenacted; and that §49-4A-6 of said code be amended and reenacted, all to read as follows:

Chapter

9. Human Services.
11. Taxation.
16. Public Health.
27. Mentally Ill Persons.
29. Miscellaneous Boards and Officers.
44A. West Virginia Guardianship and Conservatorship Act.
49. Child Welfare.

CHAPTER 9. HUMAN SERVICES.

Article
4C. Health Care Provider Medicaid Enhancement Act.
5. Miscellaneous Provisions.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-1. Definitions.
§9-4C-5. Facility providers' Medicaid enhancement board.

§9-4C-1. Definitions.

The following words when used in this article have the meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Ambulance service provider" means a person rendering ambulance services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(b) "General health care provider" means an audiologist, a behavioral health center, a chiropractor, a community care center, an independent laboratory, an independent X ray service, an occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a private duty nurse, a psychologist, a rehabilitative specialist, a respiratory therapist and a speech therapist rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "Inpatient hospital services provider" means a provider of inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

23 (d) "Intermediate care facility for individuals with an
24 intellectual disability services provider" means a provider of
25 intermediate care facility services for individuals with an
26 intellectual disability for purposes of Section 1903(w) of the
27 Social Security Act.

28 (e) "Nursing facility services provider" means a provider
29 of nursing facility services for purposes of Section 1903(w)
30 of the Social Security Act.

31 (f) "Outpatient hospital service provider" means a hospital
32 providing preventative, diagnostic, therapeutic, rehabilitative
33 or palliative services that are furnished to outpatients.

34 (g) "Secretary" means the Secretary of the Department of
35 Health and Human Resources.

36 (h) "Single state agency" means the single state agency for
37 Medicaid in this state.

§9-4C-5. Facility providers' Medicaid enhancement board.

1 (a) The outpatient hospital Medicaid enhancement board
2 created by this section shall cease to exist on the effective
3 date of this article.

4 (b) There is hereby continued the facility providers'
5 Medicaid enhancement board to consist of seven members.
6 In order to carry out the purpose of this article, the board
7 shall represent ambulatory surgical centers, inpatient hospital
8 service providers, outpatient hospital service providers,
9 nursing facility service providers and intermediate care
10 facility for individuals with an intellectual disability service
11 providers.

12 (c) The board shall consist of one representative from
13 each of the aforementioned classes of health care providers,
14 one lay person and the secretary, or his or her designee, who

15 shall serve as an ex officio, nonvoting member. The
16 Governor shall make all appointments within thirty days after
17 the effective date of this article.

18 (d) After initial appointment of the board, any
19 appointment to fill a vacancy shall be for the unexpired term
20 only, shall be made in the same manner as the initial
21 appointment, and the terms of all members shall expire on
22 July 1, 1996.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11c. Right of the Department of Health and Human Resources to recover medical assistance.

1 (a) Upon the death of a person who was fifty-five years
2 of age or older at the time the person received welfare
3 assistance consisting of nursing facility services, home and
4 community-based services, and related hospital and
5 prescription drug services, the Department of Health and
6 Human Resources, in addition to any other available remedy,
7 may file a claim or lien against the estate of the recipient for
8 the total amount of medical assistance provided by Medicaid
9 for nursing facility services, home and community-based
10 services, and related hospital and prescription drug services
11 provided for the benefit of the recipient. Claims so filed shall
12 be classified as and included in the class of debts due the
13 state.

14 (b) The department may recover pursuant to subsection
15 (a) only after the death of the individual's surviving spouse,
16 if any and only after such time as the individual has no
17 surviving children under the age of twenty-one, or when the
18 individual has no surviving children who meet the Social
19 Security Act's definition of blindness or permanent and total
20 disability.

21 (c) The state shall have the right to place a lien upon the
22 property of individuals who are inpatients in a nursing
23 facility, intermediate care facility for individuals with an
24 intellectual disability or other medical institution who, after
25 notice and an opportunity for a hearing, the state has deemed
26 to be permanently institutionalized. This lien shall be in an
27 amount equal to Medicaid expenditures for services provided
28 by a nursing facility, intermediate care facility for individuals
29 with an intellectual disability or other medical institution, and
30 shall be rendered against the proceeds of the sale of property
31 except for a minimal amount reserved for the individual's
32 personal needs. Any such lien dissolves upon that
33 individual's discharge from the medical institution. The
34 secretary has authority to compromise or otherwise reduce
35 the amount of this lien in cases where enforcement would
36 create a hardship.

37 (d) No lien may be imposed on such individual's home
38 when the home is the lawful residence of: (1) The spouse of
39 the individual; (2) the individual's child who is under the age
40 of twenty-one; (3) the individual's child meets the Social
41 Security Act's definition of blindness or permanent and total
42 disability; or (4) the individual's sibling has an equity interest
43 in the home and was residing in the home for a period of at
44 least one year immediately before the date of the individual's
45 admission to a medical institution.

46 (e) The filing of a claim, pursuant to this section, neither
47 reduces or diminishes the general claims of the Department
48 of Health and Human Resources, except that the department
49 may not receive double recovery for the same expenditure.
50 The death of the recipient neither extinguishes or
51 diminishes any right of the department to recover. Nothing
52 in this section affects or prevents a proceeding to enforce a
53 lien pursuant to this section or a proceeding to set aside a
54 fraudulent conveyance.

55 (f) Any claim or lien imposed pursuant to this section is
56 effective for the full amount of medical assistance provided
57 by Medicaid for nursing facility services, home and
58 community-based services, and related hospital and
59 prescription drug services. The lien attaches and is perfected
60 automatically as of the beginning date of medical assistance,
61 the date when a recipient first receives treatment for which
62 the Department of Health and Human Resources may be
63 obligated to provide medical assistance. A claim may be
64 waived by the department, if the department determines,
65 pursuant to applicable federal law and rules and regulations,
66 that the claim will cause substantial hardship to the surviving
67 dependents of the deceased.

68 (g) Upon the effective date of this section, the Attorney
69 General, on behalf of the State of West Virginia, shall
70 commence an action in a court of competent jurisdiction to
71 test the validity, constitutionality, and the ability of the
72 Congress of the United States to mandate the implementation
73 of this section. This subsection does not limit the right of
74 others, including recipients, to intervene in any litigation, nor
75 does it limit the discretion of the Attorney General or
76 appropriate counsel to seek affected persons to act as parties
77 to the litigation, either individually or as a class.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.
§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of providing intermediate care facility services for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing intermediate care facility services in this state to individuals with an intellectual disability.

(c) *Definitions.* --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for intermediate care facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided,* That accrual basis providers are allowed to reduce gross receipts by their contractual allowances, to the extent those allowances are included therein, and by bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Intermediate care facility services for individuals with an intellectual disability" means those services that are intermediate care facility services for individuals with an

32 intellectual disability for purposes of Section 1903(w) of the
33 Social Security Act.

34 (d) *Effective date.* -- The tax imposed by this section
35 applies to gross receipts received or receivable by providers
36 after May 31, 1993.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

1 (a) *Imposition of tax.* -- For the privilege of engaging or
2 continuing within this state in the business of providing
3 nursing facility services, other than those services of
4 intermediate care facilities for individuals with an intellectual
5 disability, there is levied and shall be collected from every
6 person rendering such service an annual broad-based health
7 care related tax: *Provided,* That hospitals which provide
8 nursing facility services may adjust nursing facility rates to
9 the extent necessary to compensate for the tax without first
10 obtaining approval from the health care authority: *Provided,*
11 *however,* That the rate adjustment is limited to a single
12 adjustment during the initial year of the imposition of the tax
13 which adjustment is exempt from prospective review by the
14 health care authority and further which is limited to an
15 amount not to exceed the amount of the tax which is levied
16 against the hospital for the provision of nursing facility
17 services pursuant to this section. The health care authority
18 shall retroactively review the rate increases implemented by
19 the hospitals under this section during the regular rate review
20 process. A hospital which fails to meet the criteria
21 established by this section for a rate increase exempt from
22 prospective review is subject to the penalties imposed under
23 article twenty-nine-b, chapter sixteen of the code.

24 (b) *Rate and measure of tax.* -- The tax imposed in
25 subsection (a) of this section is five and one-half percent of

26 the gross receipts derived by the taxpayer from furnishing
27 nursing facility services in this state, other than services of
28 intermediate care facilities for individuals with an intellectual
29 disability. This rate shall be increased to five and ninety-five
30 one hundredths percent of the gross receipts received or
31 receivable by providers of nursing facility services after June
32 30, 2004, and shall again be decreased to five and one- half
33 percent of the gross receipts received or receivable by
34 providers of nursing services after October 31, 2007.

35 (c) *Definitions.* --

36 (1) "Gross receipts" means the amount received or
37 receivable, whether in cash or in kind, from patients,
38 third-party payors and others for nursing facility services
39 furnished by the provider, including retroactive adjustments
40 under reimbursement agreements with third-party payors,
41 without any deduction for any expenses of any kind:
42 *Provided,* That accrual basis providers are allowed to reduce
43 gross receipts by their bad debts, to the extent the amount of
44 those bad debts was previously included in gross receipts
45 upon which the tax imposed by this section was paid.

46 (2) "Nursing facility services" means those services that
47 are nursing facility services for purposes of Section 1903(w)
48 of the Social Security Act.

49 (d) *Effective date.* -- The tax imposed by this section
50 applies to gross receipts received or receivable by providers
51 after May 31, 1993.

CHAPTER 16. PUBLIC HEALTH.

Article

1. State Public Health System.
2D. Certificate of Need.
5F. Health Care Financial Disclosure.
5O. Medication Administration By Unlicensed Personnel.

22. Detection and Control of Phenylketonuria, Galactosemia, Hypothyroidism, and Certain Other Diseases in Newborn Children.
29A. West Virginia Hospital Finance Authority Act.
30. West Virginia Health Care Decisions Act.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

The secretary may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and intellectual disability centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: *Provided,* That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit; (2) propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or

development which might endanger the public health, the sanitary condition of streams or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or

upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with article seven of this chapter as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: *Provided,* That any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: *Provided,* That the secretary may not require an owner of a bed and breakfast providing

93 sleeping accommodations of six or fewer rooms to install a
94 restaurant-style or commercial food service facility:
95 *Provided, however,* That the secretary may not require an
96 owner of a bed and breakfast providing sleeping
97 accommodations of more than six rooms to install a
98 restaurant-type or commercial food service facility if the
99 entire bed and breakfast inn or those rooms numbering above
100 six are used on an aggregate of two weeks or less per year;

101 (h) Fees for services provided by the Bureau for Public
102 Health including, but not limited to, laboratory service fees,
103 environmental health service fees, health facility fees and
104 permit fees;

105 (i) The collection of data on health status, the health
106 system and the costs of health care;

107 (j) Opioid treatment programs duly licensed and
108 operating under the requirements of chapter twenty-seven of
109 this code. The health care authority shall develop new
110 certificate of need standards, pursuant to the provisions of
111 article two-d of this chapter, that are specific for opioid
112 treatment program facilities. No applications for a certificate
113 of need for opioid treatment programs shall be approved by
114 the health care authority as of the effective date of the 2007
115 amendments to this subsection. The secretary shall
116 promulgate revised emergency rules to govern licensed
117 programs: *Provided,* That there is a moratorium on the
118 licensure of new opioid treatment programs that do not have
119 a certificate of need as of the effective date of the 2007
120 amendments to this subsection, which shall continue until the
121 Legislature determines that there is a necessity for additional
122 opioid treatment facilities in West Virginia. The secretary
123 shall file revised emergency rules with the Secretary of State
124 to regulate opioid programs in compliance with subsections
125 (1) through (9), inclusive, of this section: *Provided, however,*
126 That any opioid treatment program facility that has received
127 a certificate of need pursuant to article two-d, of this chapter

128 by the health care authority shall be permitted to proceed to
129 license and operate the facility. All existing opioid treatment
130 programs shall be in compliance within one hundred eighty
131 days of the effective date of the revised emergency rules as
132 required herein. The revised emergency rules shall provide
133 at a minimum:

134 (1) That the initial assessment prior to admission for
135 entry into the opioid treatment program shall include an
136 initial drug test to determine whether an individual is either
137 opioid addicted or presently receiving methadone for an
138 opioid addiction from another opioid treatment program. The
139 patient may be admitted to the program if there is a positive
140 test for either opioids or methadone or there are objective
141 symptoms of withdrawal, or both, and all other criteria set
142 forth in the rule for admission into an opioid treatment
143 program are met: *Provided,* That admission to the program
144 may be allowed to the following groups with a high risk of
145 relapse without the necessity of a positive test or the presence
146 of objective symptoms: Pregnant women with a history of
147 opioid abuse, prisoners or parolees recently released from
148 correctional facilities, former clinic patients who have
149 successfully completed treatment but who believe themselves
150 to be at risk of imminent relapse and HIV patients with a
151 history of intravenous drug use.

152 (2) That within seven days of the admission of a patient,
153 the opioid treatment program shall complete an initial
154 assessment and an initial plan of care. Subsequently, the
155 opioid treatment program shall develop a treatment plan of
156 care by the thirtieth day after admission and attach to the
157 patient's chart no later than five days after such plan is
158 developed. The treatment plan is to reflect that detoxification
159 is an option for treatment and supported by the program.

160 (3) That each opioid treatment program shall report and
161 provide statistics to the Department of Health and Human
162 Resources at least semiannually which includes the total

number of patients; the number of patients who have been continually receiving methadone treatment in excess of two years, including the total number of months of treatment for each such patient; the state residency of each patient; the number of patients discharged from the program, including the total months in the treatment program prior to discharge and whether the discharge was for:

(A) Termination or disqualification;

(B) Completion of a program of detoxification;

(C) Voluntary withdrawal prior to completion of all requirements of detoxification as determined by the opioid treatment program; or

(D) An unexplained reason.

(4) That random drug testing of patients be conducted during the course of treatment. For purposes of these rules, random drug testing shall mean that each patient of an opioid treatment program facility has a statistically equal chance of being selected for testing at random and at unscheduled times. Any refusal to participate in a random drug test shall be considered a positive test: *Provided,* That nothing contained in this section or the legislative rules promulgated in conformity herewith will preclude any opioid treatment program from administering such additional drug tests as determined necessary by the opioid treatment program.

(5) That all random drug tests conducted by an opioid treatment program shall, at a minimum, test for the following:

(A) Opiates, including oxycodone at common levels of dosing;

192 (B) Methadone and any other medication used by the
193 program as an intervention;

194 (C) Benzodiazepine including diazepam, lorazepan,
195 clonazepam and alprazolam;

196 (D) Cocaine;

197 (E) Methamphetamine or amphetamine; and

198 (F) Other drugs determined by community standards,
199 regional variation or clinical indication.

200 A positive test is a test that results in the presence of any
201 drug or substance listed in this schedule and any other drug
202 or substance prohibited by the opioid treatment program;

203 (6) That a positive drug test result after the first six
204 months in an opioid treatment program shall result in the
205 following:

206 (A) Upon the first positive drug test result, the opioid
207 treatment program shall:

208 (1) Provide mandatory and documented weekly
209 counseling to the patient, which shall include weekly
210 meetings with a counselor who is licensed, certified or
211 enrolled in the process of obtaining licensure or certification
212 in compliance with the rules and on staff at the opioid
213 treatment program;

214 (2) Immediately revoke the take home methadone
215 privilege for a minimum of thirty days; and

216 (B) Upon a second positive drug test result within six
217 months of a previous positive drug test result, the opioid
218 treatment program shall:

219 (1) Provide mandatory and documented weekly
220 counseling, which shall include weekly meetings with a
221 counselor who is licensed, certified or enrolled in the process
222 of obtaining licensure or certification in compliance with the
223 rules and on staff at the opioid treatment program;

224 (2) Immediately revoke the take-home methadone
225 privilege for a minimum of sixty days; and

226 (3) Provide mandatory documented treatment team
227 meetings with the patient.

228 (C) Upon a third positive drug test result within a period
229 of six months the opioid treatment program shall:

230 (1) Provide mandatory and documented weekly
231 counseling, which shall include weekly meetings with a
232 counselor who is licensed, certified or enrolled in the process
233 of obtaining licensure or certification in compliance with the
234 rules and on staff at the opioid treatment program;

235 (2) Immediately revoke the take-home methadone
236 privilege for a minimum of one hundred twenty days; and

237 (3) Provide mandatory and documented treatment team
238 meetings with the patient which will include, at a minimum:
239 The need for continuing treatment; a discussion of other
240 treatment alternatives; and the execution of a contract with
241 the patient advising the patient of discharge for continued
242 positive drug tests.

243 (D) Upon a fourth positive drug test within a six-month
244 period, the patient shall be immediately discharged from the
245 opioid treatment program or, at the option of the patient, shall
246 immediately be provided the opportunity to participate in a
247 twenty-one day detoxification plan, followed by immediate
248 discharge from the opioid treatment program.

(7) That the opioid treatment program must report and provide statistics to the Department of Health and Human Resources demonstrating compliance with the random drug test rules including confirmation that:

(A) The random drug tests were truly random in regard to both the patients tested and to the times random drug tests were administered by lottery or some other objective standard so as not to prejudice or protect any particular patient.

(B) The total number and the number of positive results; and

(C) The number of expulsions from the program.

(8) That all opioid treatment facilities be open for business seven days per week: *Provided,* That the opioid treatment center may be closed for eight holidays and two training days per year.

(9) That the Office of Health Facility Licensure and Certification develop policies and procedures in conjunction with the Board of Pharmacy that will allow access to the Prescription Drug Registry maintained by the Board of Pharmacy before administration of methadone or other treatment in an opioid treatment program, after any positive drug test, and at each ninety-day treatment review to ensure the patient is not seeking prescription medication from multiple sources.

(k) The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the distribution of state aid to local health departments and basic public health services funds.

(1) The rule shall include the following provisions:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services;

(E) A hold-harmless provision to provide that each local health department receives no less in state support for a period of three years beginning in the 2009 budget year.

(2) The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement the provisions of this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability prior to filing with the Secretary of State.

(l) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-5. Powers and duties of state agency.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f
2 and twenty-nine-b of this chapter are incorporated in this
3 section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the
5 context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care
12 facilities within that geographic area;

13 (5) The health care facilities which provide services
14 similar to the services of the facility under review and which
15 will be significantly affected by the proposed project;

16 (6) The health care facilities which, before receipt by the
17 state agency of the proposal being reviewed, have formally
18 indicated an intention to provide similar services in the
19 future;

20 (7) Third-party payors who reimburse health care
21 facilities similar to those proposed for services;

22 (8) Any agency that establishes rates for health care
23 facilities similar to those proposed; or

24 (9) Organizations representing health care providers.

25 (b) "Ambulatory health care facility" means a free-standing
26 facility that provides health care to noninstitutionalized and
27 nonhomebound persons on an outpatient basis. For purposes of
28 this definition, a free-standing facility is not located on the
29 campus of an existing health care facility. This definition does
30 not include any facility engaged solely in the provision of
31 lithotripsy services or the private office practice of any one or
32 more health professionals licensed to practice in this state
33 pursuant to the provisions of chapter thirty of this code:
34 *Provided,* That this exemption from review may not be
35 construed to include practices where major medical equipment
36 otherwise subject to review under the provisions of this article
37 is acquired, offered or developed: *Provided, however,* That this
38 exemption from review may not be construed to include certain
39 health services otherwise subject to review under the provisions
40 of subdivision (1), subsection (a), section four of this article.

41 (c) "Ambulatory surgical facility" means a free-standing
42 facility that provides surgical treatment to patients not
43 requiring hospitalization. For purposes of this definition, a
44 free-standing facility is not physically attached to a health
45 care facility. This definition does not include the private
46 office practice of any one or more health professionals
47 licensed to practice surgery in this state pursuant to the
48 provisions of chapter thirty of this code: *Provided,* That this
49 exemption from review may not be construed to include
50 practices where major medical equipment otherwise subject
51 to review under the provisions of this article is acquired,
52 offered or developed: *Provided, however,* That this
53 exemption from review may not be construed to include
54 health services otherwise subject to review under the
55 provisions of subdivision (1), subsection (a), section four of
56 this article.

57 (d) "Applicant" means: (1) The governing body or the
58 person proposing a new institutional health service who is, or
59 will be, the health care facility licensee wherein the new
60 institutional health service is proposed to be located; and (2)

61 in the case of a proposed new institutional health service not
62 to be located in a licensed health care facility, the governing
63 body or the person proposing to provide the new institutional
64 health service. Incorporators or promoters who will not
65 constitute the governing body or persons responsible for the
66 new institutional health service may not be an applicant.

67 (e) "Bed capacity" means the number of beds licensed to
68 a health care facility or the number of adult and pediatric
69 beds permanently staffed and maintained for immediate use
70 by inpatients in patient rooms or wards in an unlicensed
71 facility.

72 (f) "Campus" means the adjacent grounds and buildings,
73 or grounds and buildings not separated by more than a public
74 right-of-way, of a health care facility.

75 (g) "Capital expenditure" means:

76 (1) An expenditure made by or on behalf of a health care
77 facility, which:

78 (A) (i) Under generally accepted accounting principles is
79 not properly chargeable as an expense of operation and
80 maintenance; or (ii) is made to obtain either by lease or
81 comparable arrangement any facility or part thereof or any
82 equipment for a facility or part; and

83 (B)(i) Exceeds the expenditure minimum; or (ii) is a
84 substantial change to the bed capacity of the facility with
85 respect to which the expenditure is made; or (iii) is a
86 substantial change to the services of such facility;

87 (2) The donation of equipment or facilities to a health
88 care facility, which if acquired directly by that facility would
89 be subject to review;

90 (3) The transfer of equipment or facilities for less than
91 fair market value if the transfer of the equipment or facilities
92 at fair market value would be subject to review; or

93 (4) A series of expenditures, if the sum total exceeds the
94 expenditure minimum and if determined by the state agency
95 to be a single capital expenditure subject to review. In
96 making this determination, the state agency shall consider:
97 Whether the expenditures are for components of a system
98 which is required to accomplish a single purpose; whether the
99 expenditures are to be made over a two-year period and are
100 directed towards the accomplishment of a single goal within
101 the health care facility's long-range plan; or whether the
102 expenditures are to be made within a two-year period within
103 a single department such that they will constitute a significant
104 modernization of the department.

105 (h) "Expenditure minimum" means $2,700,000 for the
106 calendar year 2009. The state agency shall adjust the
107 expenditure minimum annually and publish an update of the
108 amount on or before December 31 of each year. The
109 expenditure minimum adjustment shall be based on the DRI
110 inflation index published in the *Global Insight DRI/WEFA*
111 *Health Care Cost Review*, or its successor or appropriate
112 replacement index. This amount shall include the cost of any
113 studies, surveys, designs, plans, working drawings,
114 specifications and other activities, including staff effort and
115 consulting and other services essential to the acquisition,
116 improvement, expansion or replacement of any plant or
117 equipment.

118 (i) "Health", used as a term, includes physical and mental
119 health.

120 (j) "Health care facility" means a publicly or privately
121 owned facility, agency or entity that offers or provides health
122 care services, whether a for-profit or nonprofit entity and

whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and intellectual disability facilities. For purposes of this definition, "community mental health and intellectual disability facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical, remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or private organization which:

(1) Is required to have a certificate of authority to operate in this state pursuant to section three, article twenty-five-a, chapter thirty-three of this code; or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage;

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph

156 (A) of this subdivision to enrolled participants on a
157 predetermined periodic rate basis without regard to the date
158 the health care services are provided and which is fixed
159 without regard to the frequency, extent or kind of health
160 service actually provided; and

161 (C) Provides physicians' services: (i) Directly through
162 physicians who are either employees or partners of the
163 organization; or (ii) through arrangements with individual
164 physicians or one or more groups of physicians organized on
165 a group practice or individual practice basis.

166 (m) "Health services" means clinically related preventive,
167 diagnostic, treatment or rehabilitative services, including
168 alcohol, drug abuse and mental health services.

169 (n) "Home health agency" means an organization
170 primarily engaged in providing professional nursing services
171 either directly or through contract arrangements and at least
172 one of the following services: Home health aide services,
173 other therapeutic services, physical therapy, speech therapy,
174 occupational therapy, nutritional services or medical social
175 services to persons in their place of residence on a part-time
176 or intermittent basis.

177 (o) "Hospice agency" means a private or public agency
178 or organization licensed in West Virginia for the
179 administration or provision of hospice care services to
180 terminally ill persons in the persons' temporary or permanent
181 residences by using an interdisciplinary team, including, at a
182 minimum, persons qualified to perform nursing services;
183 social work services; the general practice of medicine or
184 osteopathy; and pastoral or spiritual counseling.

185 (p) "Hospital" means a facility licensed as such pursuant
186 to the provisions of article five-b of this chapter, and any
187 acute care facility operated by the state government, that

188 primarily provides inpatient diagnostic, treatment or
189 rehabilitative services to injured, disabled or sick persons
190 under the supervision of physicians and includes psychiatric
191 and tuberculosis hospitals.

192 (q) "Intermediate care facility" means an institution that
193 provides health-related services to individuals with mental or
194 physical conditions that require services above the level of
195 room and board, but do not require the degree of services
196 provided in a hospital or skilled-nursing facility.

197 (r) "Long-range plan" means a document formally
198 adopted by the legally constituted governing body of an
199 existing health care facility or by a person proposing a new
200 institutional health service which contains the information
201 required by the state agency in rules adopted pursuant to
202 section eight of this article.

203 (s) "Major medical equipment" means a single unit of
204 medical equipment or a single system of components with
205 related functions which is used for the provision of medical
206 and other health services and costs in excess of $2,700,000 in
207 the calendar year 2009. The state agency shall adjust the
208 dollar amount specified in this subsection annually and
209 publish an update of the amount on or before December 31
210 of each year. The adjustment of the dollar amount shall be
211 based on the DRI inflation index published in the *Global*
212 *Insight DRI/WEFA Health Care Cost Review* or its successor
213 or appropriate replacement index. This term does not include
214 medical equipment acquired by or on behalf of a clinical
215 laboratory to provide clinical laboratory services if the
216 clinical laboratory is independent of a physician's office and
217 a hospital and it has been determined under Title XVIII of the
218 Social Security Act to meet the requirements of paragraphs
219 ten and eleven, Section 1861(s) of such act, Title 42 U.S.C.
220 §1395x. In determining whether medical equipment is major
221 medical equipment, the cost of studies, surveys, designs,

222 plans, working drawings, specifications and other activities
223 essential to the acquisition of such equipment shall be
224 included. If the equipment is acquired for less than fair
225 market value, the term "cost" includes the fair market value.

226 (t) "Medically underserved population" means the
227 population of an area designated by the state agency as
228 having a shortage of personal health services. The state
229 agency may consider unusual local conditions that are a
230 barrier to accessibility or availability of health services. The
231 designation shall be in rules adopted by the state agency
232 pursuant to section eight of this article, and the population so
233 designated may include the state's medically underserved
234 population designated by the federal Secretary of Health and
235 Human Services under Section 330(b)(3) of the Public Health
236 Service Act, as amended, Title 42 U.S.C. §254.

237 (u) "New institutional health service" means any service
238 as described in section three of this article.

239 (v) "Nonhealth-related project" means a capital
240 expenditure for the benefit of patients, visitors, staff or
241 employees of a health care facility and not directly related to
242 preventive, diagnostic, treatment or rehabilitative services
243 offered by the health care facility. This includes, but is not
244 limited to, chapels, gift shops, news stands, computer and
245 information technology systems, educational, conference and
246 meeting facilities, but excluding medical school facilities,
247 student housing, dining areas, administration and volunteer
248 offices, modernization of structural components, boiler repair
249 or replacement, vehicle maintenance and storage facilities,
250 parking facilities, mechanical systems for heating, ventilation
251 systems, air conditioning systems and loading docks.

252 (w) "Offer", when used in connection with health
253 services, means that the health care facility or health
254 maintenance organization holds itself out as capable of

255 providing, or as having the means to provide, specified health
256 services.

257 (x) "Person" means an individual, trust, estate,
258 partnership, committee, corporation, association and other
259 organizations such as joint-stock companies and insurance
260 companies, a state or a political subdivision or
261 instrumentality thereof or any legal entity recognized by the
262 state.

263 (y) "Physician" means a doctor of medicine or osteopathy
264 legally authorized to practice by the state.

265 (z) "Proposed new institutional health service" means any
266 service as described in section three of this article.

267 (aa) "Psychiatric hospital" means an institution that
268 primarily provides to inpatients, by or under the supervision
269 of a physician, specialized services for the diagnosis,
270 treatment and rehabilitation of mentally ill and emotionally
271 disturbed persons.

272 (bb) "Rehabilitation facility" means an inpatient facility
273 operated for the primary purpose of assisting in the
274 rehabilitation of disabled persons through an integrated
275 program of medical and other services which are provided
276 under competent professional supervision.

277 (cc) "Review agency" means an agency of the state,
278 designated by the Governor as the agency for the review of
279 state agency decisions.

280 (dd) "Skilled nursing facility" means an institution, or a
281 distinct part of an institution, that primarily provides inpatient
282 skilled nursing care and related services, or rehabilitation
283 services, to injured, disabled or sick persons.

284 (ee) "State agency" means the Health Care Authority
285 created, established and continued pursuant to article
286 twenty-nine-b of this chapter.

287 (ff) "State health plan" means the document approved by
288 the Governor after preparation by the former statewide health
289 coordinating council or that document as approved by the
290 Governor after amendment by the former health care
291 planning council or the state agency.

292 (gg) "Substantial change to the bed capacity" of a health
293 care facility means any change, associated with a capital
294 expenditure, that increases or decreases the bed capacity or
295 relocates beds from one physical facility or site to another,
296 but does not include a change by which a health care facility
297 reassigns existing beds as swing beds between acute care and
298 long-term care categories*: Provided,* That a decrease in bed
299 capacity in response to federal rural health initiatives is
300 excluded from this definition.

301 (hh) "Substantial change to the health services" of a
302 health care facility means: (1) The addition of a health
303 service offered by or on behalf of the health care facility
304 which was not offered by or on behalf of the facility within
305 the twelve-month period before the month in which the
306 service is first offered; or (2) the termination of a health
307 service offered by or on behalf of the facility: *Provided,* That
308 "substantial change to the health services" does not include
309 the providing of ambulance service, wellness centers or
310 programs, adult day care or respite care by acute care
311 facilities.

312 (ii) "To develop", when used in connection with health
313 services, means to undertake those activities which upon their
314 completion will result in the offer of a new institutional
315 health service or the incurring of a financial obligation in
316 relation to the offering of such a service.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state
5 and for amending and modifying the state health plan which
6 includes the certificate of need standards. The state agency
7 shall review the state health plan, including the certificate of
8 need standards and make any necessary amendments and
9 modifications. The state agency shall also review the cost
10 effectiveness of the certificate of need program. The state
11 agency may form task forces to assist it in addressing these
12 issues. The task forces shall be composed of representatives
13 of consumers, business, providers, payers and state agencies.

14 (c) The state agency may seek advice and assistance of
15 other persons, organizations and other state agencies in the
16 performance of the state agency's responsibilities under this
17 article.

18 (d) For health services for which competition
19 appropriately allocates supply consistent with the state health
20 plan, the state agency shall, in the performance of its
21 functions under this article, give priority, where appropriate
22 to advance the purposes of quality assurance, cost
23 effectiveness and access, to actions which would strengthen
24 the effect of competition on the supply of the services.

25 (e) For health services for which competition does not or
26 will not appropriately allocate supply consistent with the state
27 health plan, the state agency shall, in the exercise of its
28 functions under this article, take actions, where appropriate
29 to advance the purposes of quality assurance, cost
30 effectiveness and access and the other purposes of this article,
31 to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved: *Provided,* That any fee charged pursuant to this subsection may not exceed a dollar amount to be established by procedural rule. The state agency shall evaluate and amend any procedural rule promulgated prior to the amendments to this subsection made during the 2009 regular session of the Legislature. The fees charged shall be deposited into a special fund known as the Certificate of Need Program Fund to be expended for the purposes of this article.

(g) A hospital, nursing home or other health care facility may not add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: *Provided,* That hospitals eligible under the provisions of section four-a of this article and subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, a certificate of need may not be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. Extensions may not be granted beyond the twelve-month period. The state agency shall

68 establish a task force or utilize an existing task force to study
69 the need for additional nursing facility beds in this state. The
70 study shall include a review of the current moratorium on the
71 development of nursing facility beds; the exemption for the
72 conversion of acute care beds to skilled nursing facility beds;
73 the development of a methodology to assess the need for
74 additional nursing facility beds; and certification of new beds
75 both by Medicare and Medicaid. The task force shall be
76 composed of representatives of consumers, business,
77 providers, payers and government agencies.

78 (h) No additional intermediate care facility for
79 individuals with an intellectual disability (ICF/ ID) beds may
80 be granted a certificate of need, except that prohibition does
81 not apply to ICF/MR beds approved under the Kanawha
82 County Circuit Court order of August 3, 1989, civil action
83 number MISC-81-585 issued in the case of E.H. v. Matin,
84 168 W.V. 248, 284 S.E. 2d 232 (1981).

85 (i) Notwithstanding the provisions of subsection (g) of
86 this section and further notwithstanding the provisions of
87 subsection (b), section three of this article, an existing acute
88 care hospital may apply to the Health Care Authority for a
89 certificate of need to convert acute care beds to skilled
90 nursing beds: *Provided,* That the proposed skilled nursing
91 beds are Medicare-certified only: *Provided, however,* That
92 any hospital which converts acute care beds to Medicare-
93 certified only skilled nursing beds shall not bill for any
94 Medicaid reimbursement for any converted beds. In
95 converting beds, the hospital shall convert a minimum of one
96 acute care bed into one Medicare-certified only skilled
97 nursing bed. The Health Care Authority may require a
98 hospital to convert up to and including three acute care beds
99 for each Medicare-certified only skilled nursing bed:
100 *Provided further,* That a hospital designated or provisionally
101 designated by the state agency as a rural primary care
102 hospital may convert up to thirty beds to a distinct-part

103 nursing facility, including skilled nursing beds and
104 intermediate care beds, on a one-for-one basis if the rural
105 primary care hospital is located in a county without a
106 certified freestanding nursing facility and the hospital may
107 bill for Medicaid reimbursement for the converted beds: *And*
108 *provided further,* That if the hospital rejects the designation
109 as a rural primary care hospital, then the hospital may not bill
110 for Medicaid reimbursement. The Health Care Authority
111 shall adopt rules to implement this subsection which require
112 that:

113 (1) All acute care beds converted shall be permanently
114 deleted from the hospital's acute care bed complement and
115 the hospital may not thereafter add, by conversion or
116 otherwise, acute care beds to its bed complement without
117 satisfying the requirements of subsection (b), section three of
118 this article for which purposes an addition, whether by
119 conversion or otherwise, shall be considered a substantial
120 change to the bed capacity of the hospital notwithstanding the
121 definition of that term found in subsection (ff), section two of
122 this article.

123 (2) The hospital shall meet all federal and state licensing
124 certification and operational requirements applicable to
125 nursing homes including a requirement that all skilled care
126 beds created under this subsection shall be located in
127 distinct-part, long-term care units.

128 (3) The hospital shall demonstrate a need for the project.

129 (4) The hospital shall use existing space for the
130 Medicare-certified only skilled nursing beds. Under no
131 circumstances shall the hospital construct, lease or acquire
132 additional space for purposes of this section.

133 (5) The hospital shall notify the acute care patient, prior
134 to discharge, of facilities with skilled nursing beds which are
135 located in or near the patient's county of residence. Nothing

136 in this subsection negatively affects the rights of inspection
137 and certification which are otherwise required by federal law
138 or regulations or by this code or duly adopted rules of an
139 authorized state entity.

140 (j) (1) Notwithstanding the provisions of subsection (g)
141 of this section, a retirement life care center with no skilled
142 nursing beds may apply to the Health Care Authority for a
143 certificate of need for up to sixty skilled nursing beds
144 provided the proposed skilled beds are Medicare-certified
145 only. On a statewide basis, a maximum of one hundred
146 eighty skilled beds which are Medicare-certified only may be
147 developed pursuant to this subsection. The state health plan
148 is not applicable to projects submitted under this subsection.
149 The Health Care Authority shall adopt rules to implement
150 this subsection which shall include a requirement that:

151 (A) The one hundred eighty beds are to be distributed on
152 a statewide basis;

153 (B) There be a minimum of twenty beds and a maximum
154 of sixty beds in each approved unit;

155 (C) The unit developed by the retirement life care center
156 meets all federal and state licensing certification and
157 operational requirements applicable to nursing homes;

158 (D) The retirement center demonstrates a need for the
159 project;

160 (E) The retirement center offers personal care, home
161 health services and other lower levels of care to its residents;
162 and

163 (F) The retirement center demonstrates both short- and
164 long-term financial feasibility.

165 (2) Nothing in this subsection negatively affects the rights
166 of inspection and certification which are otherwise required
167 by federal law or regulations or by this code or duly adopted
168 rules of an authorized state entity.

169 (k) The state agency may order a moratorium upon the
170 offering or development of a new institutional health service
171 when criteria and guidelines for evaluating the need for the
172 new institutional health service have not yet been adopted or
173 are obsolete. The state agency may also order a moratorium
174 on the offering or development of a health service,
175 notwithstanding the provisions of subdivision (5), subsection
176 (b), section three of this article, when it determines that the
177 proliferation of the service may cause an adverse impact on
178 the cost of health care or the health status of the public. A
179 moratorium shall be declared by a written order which shall
180 detail the circumstances requiring the moratorium. Upon the
181 adoption of criteria for evaluating the need for the health
182 service affected by the moratorium, or one hundred eighty
183 days from the declaration of a moratorium, whichever is less,
184 the moratorium shall be declared to be over and applications
185 for certificates of need are processed pursuant to section six
186 of this article.

187 (l) (1) The state agency shall coordinate the collection of
188 information needed to allow the state agency to develop
189 recommended modifications to certificate of need standards
190 as required in this article. When the state agency proposes
191 amendments or modifications to the certificate of need
192 standards, it shall file with the Secretary of State, for
193 publication in the State Register, a notice of proposed action,
194 including the text of all proposed amendments and
195 modifications, and a date, time and place for receipt of
196 general public comment. To comply with the public
197 comment requirement of this section, the state agency may
198 hold a public hearing or schedule a public comment period
199 for the receipt of written statements or documents.

200 (2) When amending and modifying the certificate of need
201 standards, the state agency shall identify relevant criteria
202 contained in section six of this article or rules adopted
203 pursuant to section eight of this article and apply those
204 relevant criteria to the proposed new institutional health
205 service in a manner that promotes the public policy goals and
206 legislative findings contained in section one of this article. In
207 doing so, the state agency may consult with or rely upon
208 learned treatises in health planning, recommendations and
209 practices of other health planning agencies and organizations,
210 recommendations from consumers, recommendations from
211 health care providers, recommendations from third-party
212 payors, materials reflecting the standard of care, the state
213 agency's own developed expertise in health planning, data
214 accumulated by the state agency or other local, state or
215 federal agency or organization and any other source deemed
216 relevant to the certificate of need standards proposed for
217 amendment or modification.

218 (3) All proposed amendments and modifications to the
219 certificate of need standards, with a record of the public
220 hearing or written statements and documents received
221 pursuant to a public comment period, shall be presented to
222 the Governor. Within thirty days of receiving the proposed
223 amendments or modifications, the Governor shall either
224 approve or disapprove all or part of the amendments and
225 modifications and, for any portion of amendments or
226 modifications not approved, shall specify the reason or
227 reasons for nonapproval. Any portions of the amendments or
228 modifications not approved by the Governor may be revised
229 and resubmitted.

230 (4) The certificate of need standards adopted pursuant to
231 this section which are applicable to the provisions of this
232 article are not subject to article three, chapter twenty-nine-a
233 of this code. The state agency shall follow the provisions set
234 forth in this subsection for giving notice to the public of its

actions, holding hearings or receiving comments on the certificate of need standards. The certificate of need standards in effect on November 29, 2005, and all prior versions promulgated and adopted in accordance with the provisions of this section are and have been in full force and effect from each of their respective dates of approval by the Governor.

(m) The state agency may exempt from or expedite rate review, certificate of need and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health care services.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

As used in this article:

(1) "Annual report" means an annual financial report for the covered facility's or related organization's fiscal year prepared by an accountant or the covered facility's or related organization's Auditor.

(2) "Board" means the West Virginia Health Care Authority.

(3) "Covered facility" means any hospital, skilled nursing facility, kidney disease treatment center, including a free-standing hemodialysis unit; intermediate care facility; ambulatory health care facility; ambulatory surgical facility; home health agency; hospice agency; rehabilitation facility; health maintenance organization; or community mental

14 health or intellectual disability facility, whether under public
15 or private ownership or as a profit or nonprofit organization
16 and whether or not licensed or required to be licensed, in
17 whole or in part, by the state: *Provided,* That nonprofit,
18 community-based primary care centers providing primary
19 care services without regard to ability to pay which provide
20 the board with a year-end audited financial statement
21 prepared in accordance with generally accepted auditing
22 standards and with governmental auditing standards issued
23 by the Comptroller General of the United States shall be
24 deemed to have complied with the disclosure requirements of
25 this section.

26 (4) "Related organization" means an organization,
27 whether publicly owned, nonprofit, tax-exempt or for profit,
28 related to a covered facility through common membership,
29 governing bodies, trustees, officers, stock ownership, family
30 members, partners or limited partners, including, but not
31 limited to, subsidiaries, foundations, related corporations and
32 joint ventures. For the purposes of this subdivision "family
33 members" shall mean brothers and sisters whether by the
34 whole or half blood, spouse, ancestors and lineal
35 descendants.

36 (5) "Rates" means all rates, fees or charges imposed by
37 any covered facility for health care services.

38 (6) "Records" includes accounts, books, charts, contracts,
39 documents, files, maps, papers, profiles, reports, annual and
40 otherwise, schedules and any other fiscal data, however
41 recorded or stored.

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5O-2. Definitions.

As used in this article, unless a different meaning appears from the context, the following definitions apply:

(a) "Administration of medication" means:

(1) Assisting a person in the ingestion, application or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or authorized practitioner, or as written on the prescription label; and

(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken*: Provided,* That for purposes of this article, "administration" does not include judgment, evaluation, assessments, injections of medication, monitoring of medication or self-administration of medications, including prescription drugs and self-injection of medication by the resident.

(b) "Authorizing agency" means the department's Office of Health Facility Licensure and Certification.

(c) "Department" means the Department of Health and Human Resources.

(d) "Facility" means an ICF/ID, a personal care home, residential board and care home, behavioral health group home, private residence in which health care services are provided under the supervision of a registered nurse or an adult family care home that is licensed by or approved by the department.

(e) "Facility staff member" means an individual employed by a facility but does not include a health care professional acting within the scope of a professional license or certificate.

(f) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(g) "ICF-ID" means an intermediate care facility for individuals with an intellectual disability which is certified by the department.

(h) "Medication" means a drug, as defined in section one hundred one, article one, chapter sixty-a of this code, which has been prescribed by a duly authorized health care professional to be ingested through the mouth, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(i) "Registered professional nurse" means a person who holds a valid license pursuant to article seven, chapter thirty of this code.

(j) "Resident" means a resident of a facility.

(k) "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee.

(l) "Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

(m) "Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for

62 residents, reading the medication label to residents, observing
63 residents while they take medication, checking the self
64 administered dosage against the label on the container and
65 reassuring residents that they have obtained and are taking
66 the dosage as prescribed.

ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA, GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN OTHER DISEASES IN NEWBORN CHILDREN.

§16-22-1. Findings.
§16-22-2. Program to combat intellectual disability or other severe health hazards; rules; facilities for making tests.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria, galactosemia,
2 hypothyroidism, and certain other diseases are usually
3 associated with intellectual disability or other severe health
4 hazards. Laboratory tests are readily available to aid in the
5 detection of these diseases and hazards to the health of those
6 suffering from these diseases may be lessened or prevented
7 by early detection and treatment. Damage from these
8 diseases, if untreated in the early months of life, is usually
9 rapid and not appreciably affected by treatment.

§16-22-2. Program to combat intellectual disability or other severe health hazards; rules; facilities for making tests.

1 The State Bureau of Public Health is authorized to
2 establish and carry out a program designed to combat
3 intellectual disability or other severe health hazards in our
4 state's population due to phenylketonuria, galactosemia,
5 hypothyroidism, and certain other diseases specified by the
6 State Public Health Commissioner, and may adopt reasonable

7 rules and regulations necessary to carry out such a program.
8 The Bureau of Public Health shall establish and maintain
9 facilities at its state hygienic laboratory for testing specimens
10 for the detection of phenylketonuria, galactosemia,
11 hypothyroidism, and certain other diseases specified by the
12 State Public Health Commissioner. Tests shall be made by
13 such laboratory of specimens upon request by physicians,
14 hospital medical personnel and other individuals attending
15 newborn infants. The State Bureau of Public Health is
16 authorized to establish additional laboratories throughout the
17 state to perform tests for the detection of phenylketonuria,
18 galactosemia, hypothyroidism, and certain other diseases
19 specified by the State Public Health Commissioner.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia Hospital Finance
4 Authority created by section four of this article, the duties,
5 powers, responsibilities and functions of which are specified
6 in this article;

7 (2) "Board" means the West Virginia Hospital Finance
8 Board created by section four of this article, which shall
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the authority
11 to effect the purposes of this article;

12 (4) "Construction" means and includes new construction,
13 reconstruction, enlargement, improvement and providing
14 furnishings or equipment;

(5) "Direct provider of health care" means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician's assistant or an organization comprised of these health professionals or employing these health professionals;

(6) "Hospital" means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state-owned or operated establishment and specifically includes nursing homes which are licensed under chapter sixteen of this code or those facilities certified under the Social Security Act as intermediate care facilities for individuals with an intellectual disability;

(7) "Hospital facilities" means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses', doctors' or interns' residences; administration buildings; facilities for research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and garages; and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing and specifically includes any capital improvements to any of the foregoing. "Hospital facilities" specifically includes office facilities not less than eighty percent of which are intended for lease to direct providers of health care and which are geographically or functionally related to one or more other hospital facilities, if the authority determines that the financing of the office facilities is necessary to accomplish the purposes of this article;

(8) "Hospital loan" means a loan made by the authority to a hospital and specifically includes financings by the authority for hospital facilities pursuant to lease-purchase agreements, installment sale or other similar agreements;

50 (9) "Note" means a short-term promise to pay a specified
51 amount of money, payable and secured as provided pursuant
52 to this article and issued by the authority to effect the
53 purposes of this article;

54 (10) "Project costs" means the total of the reasonable or
55 necessary costs incurred for carrying out the works and
56 undertakings for the acquisition or construction of hospital
57 facilities under this article. "Project costs" includes, but is
58 not limited to, all of the following costs: The costs of
59 acquisition or construction of the hospital facilities; studies
60 and surveys; plans, specifications, architectural and
61 engineering services; legal, organization, marketing or other
62 special services; financing, acquisition, demolition,
63 construction, equipping and site development of new and
64 rehabilitated buildings; rehabilitation, reconstruction, repair
65 or remodeling of existing buildings; interest and carrying
66 charges during construction and before full earnings are
67 achieved and operating expenses before full earnings are
68 achieved or a period of one year following the completion of
69 construction, whichever occurs first; and a reasonable reserve
70 for payment of principal of and interest on bonds or notes of
71 the authority. "Project costs" shall also include
72 reimbursement of a hospital for the foregoing costs expended
73 by a hospital from its own funds or from money borrowed by
74 the hospital for such purposes before issuance and delivery
75 of bonds or notes by the authority for the purpose of
76 providing funds to pay the project costs. "Project costs" also
77 specifically includes the refinancing of any existing debt of
78 a hospital necessary in order to permit the hospital to borrow
79 from the authority and give adequate security for the hospital
80 loan. The determination of the authority with respect to the
81 necessity of refinancing and adequate security for a hospital
82 loan is conclusive;

83 (11) "Revenue" means any money or thing of value
84 collected by, or paid to, the authority as principal of or

interest, charges or other fees on hospital loans or any other collections on hospital loans made by the authority to hospitals to finance, in whole or in part, the acquisition or construction of any hospital facilities or other money or property which is received and may be expended for or pledged as revenues pursuant to this article;

(12) "Veterans skilled nursing facility" means a skilled nursing care facility constructed and operated to serve the needs of veterans of the Armed Forces of the United States who are citizens of this state.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-7. Determination of incapacity.
§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, intellectual disability or addiction.

§16-30-7. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or intellectual disability, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner who has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, a qualified physician, advanced nurse practitioner or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person's incapacity, if these are known.

17 (c) If the person is conscious, the attending physician
18 shall inform the person that he or she has been determined to
19 be incapacitated and that a medical power of attorney
20 representative or surrogate decision-maker may be making
21 decisions regarding life-prolonging intervention or mental
22 health treatment for the person.

§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, intellectual disability or addiction.

1 For persons with psychiatric mental illness, intellectual
2 disability or addiction who have been determined by their
3 attending physician or a qualified physician to be
4 incapacitated, a second opinion by a qualified physician or
5 qualified psychologist that the person is incapacitated is
6 required before the attending physician is authorized to select
7 a surrogate. The requirement for a second opinion does not
8 apply in those instances in which the medical treatment to be
9 rendered is not for the person's psychiatric mental illness.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

1. Words and Phrases Defined.
1A. Department of Health.
2. Mental Health Facilities.
2A. Mental Health - Intellectual Disability Centers.
5. Involuntary Hospitalization.
9. Licensing of Hospitals.
12. Offenses.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-3. Intellectual disability.
§27-1-6. State Hospital.
§27-1-7. Administrator and clinical director.
§27-1-9. Mental health facility.

§27-1-3. Intellectual disability.

"Intellectual disability" means significantly subaverage intellectual functioning which manifests itself in a person during his or her developmental period and which is characterized by his or her inadequacy in adaptive behavior. Notwithstanding any provision to the contrary, if any service provision or reimbursement is affected by the changes in terminology adopted in the 2010 First Extraordinary Session of the Legislature, the terms "intellectual disability" or "individuals with an intellectual disability" shall assume their previous terminology. It is not the intent of the Legislature to expand the class of individuals affected by this terminology change.

§27-1-6. State hospital.

"State hospital" means any hospital, center or institution, or part of any hospital, center or institution, established, maintained and operated by the Division of Health, or by the Division of Health in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or addicted. The terms "hospital" and "state hospital" exclude correctional and regional jail facilities.

§27-1-7. Administrator and clinical director.

(a) The administrator of a state-operated treatment facility is its chief executive officer and has the authority to manage and administer the financial, business and personnel affairs of such facility. All other persons employed at the state-operated treatment facility are under the jurisdiction and authority of the administrator of the treatment facility who need not be a physician.

(b) The clinical director has the responsibility for decisions involving clinical and medical treatment of patients in a state-operated mental health facility. The clinical director

11 must be a physician duly licensed to practice medicine in this
12 state who has completed training in an accredited program of
13 post-graduate education in psychiatry.

14 (c) In any facility designated by the Secretary of the
15 Department of Health and Human Resources as a facility for
16 individuals with an intellectual disability in which programs
17 and services are designed primarily to provide education,
18 training and rehabilitation rather than medical or psychiatric
19 treatment, the duties and responsibilities, other than those
20 directly related to medical treatment services, assigned to the
21 clinical director by this section or elsewhere in this chapter,
22 are assigned to and become the responsibility of the
23 administrator of that facility, or of a person with expertise in
24 the field of intellectual disability, who need not be a
25 physician, designated by the administrator.

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, residential
2 or outpatient facility for the care and treatment of the
3 mentally ill, intellectually disabled or addicted which is
4 operated, or licensed to operate, by the Department of Health
5 and Human Resources and includes state hospitals as defined
6 in section six of this article. The term also includes veterans
7 administration hospitals, but does not include any regional
8 jail, juvenile or adult correctional facility, or juvenile
9 detention facility.

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-1. Statement of policy.
§27-1A-4. Powers and duties of the secretary.
§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

§27-1A-1. Statement of policy.

The purpose of this article is to improve the administration of the state hospitals, raise the standards of treatment of the mentally ill and intellectually disabled in the state hospitals, encourage the further development of outpatient and diagnostic clinics, establish better research and training programs, and promote the development of mental health.

§27-1A-4. Powers and duties of the secretary.

In addition to the powers and duties set forth in any other provision of this code, the Secretary of the Department of Health and Human Resources has the following powers and duties:

(a) To develop and maintain a state plan which sets forth needs of the state in the areas of mental health and intellectual disability; goals and objectives for meeting those needs; plan of operation for achieving the stated goals and objectives, including organizational structure; and statement of requirements in personnel funds and authority for achieving the goals and objectives.

(b) To appoint deputies and assistants to supervise the departmental programs, including hospital and residential services, and such other assistants and employees as may be necessary for the efficient operation of the department and all its programs.

(c) To promulgate rules clearly specifying the respective duties and responsibilities of program directors and fiscal administrators, making a clear distinction between the respective functions of these officials.

(d) To delegate to any of his or her appointees, assistants or employees all powers and duties vested in the commissioner, including the power to execute contracts and

agreements in the name of the department as provided in this article, but the commissioner shall be responsible for the acts of such appointees, assistants and employees.

(e) To supervise and coordinate the operation of the state hospitals named in article two of this chapter and any other state hospitals, centers or institutions hereafter created for the care and treatment of the mentally ill or intellectually disabled, or both.

(f) To transfer a patient from any state hospital to any other state hospital or clinic under his or her control and, by agreement with the state Division of Corrections, transfer a patient from a state hospital to an institution, other than correctional, under the supervision of the state Division of Corrections.

(g) To make periodic reports to the Governor and to the Legislature on the condition of the state hospitals, centers and institutions or on other matters within his or her authority, which shall include recommendations for improvement of any mental health facility and any other matters affecting the mental health of the people of the state.

The Secretary of the Department of Health and Human Resources has all of the authority vested in the divisions of the former Department of Mental Health, as hereinafter provided.

The Secretary of the Department of Health and Human Resources is hereby authorized and empowered to accept and use for the benefit of a state hospital, center or institution, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state hospital, center or institution, it shall be used as specified. Any gift or devise of any

56 property or thing which lawfully may be given and whatever
57 profit may arise from its use or investment shall be deposited
58 in a special revenue fund with the State Treasurer, and shall
59 be used only as specified by the donor or donors.

§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

1 There is a Division of Professional Services established
2 in the Department of Mental Health. The supervisor of this
3 division shall assist the director in the operation of the
4 programs or services of the department and shall be a
5 qualified psychiatrist.

6 The supervisor of this division has the following powers
7 and duties:

8 (1) To develop professional standards, provide
9 supervision of state hospitals, analyze hospital programs and
10 inspect individual hospitals.

11 (2) To assist in recruiting professional staff.

12 (3) To take primary responsibility for the education and
13 training of professional and subprofessional personnel.

14 (4) To carry on or stimulate research activities related to
15 medical and psychiatric facilities of the department, and
16 render specialized assistance to hospital superintendents.

17 (5) To establish liaison with appropriate state agencies
18 and with private groups interested in mental health, including
19 the state Bureau for Public Health, Division of Corrections,
20 the Department of Education, the Board of Governors of
21 West Virginia University, and the West Virginia Association
22 for Mental Health, Incorporated.

(6) To license, supervise and inspect any hospital, center or institution, or part of any hospital, center or institution, maintained and operated by any political subdivision or by any person, persons, association or corporation to provide inpatient care and treatment for the mentally ill, or individuals with an intellectual disability, or both.

(7) To perform any other duties assigned to the division by the Secretary of the Department of Health and Human Resources.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1. State hospitals and other facilities; transfer of control and property from Department of Mental Health to Department of Health and Human Resources; civil service coverage.

The state hospitals heretofore established at Weston, Huntington and Lakin, are continued and known respectively as the William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital and Lakin Hospital. These state hospitals and centers are managed, directed and controlled by the Department of Health and Human Resources. Any person employed by the Department of Mental Health who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee. The Secretary of the Department of Health and Human Resources is authorized to bring the state hospitals into structural compliance with appropriate fire and health standards. All references in this code or elsewhere in law to the "West Virginia Training School" shall be taken and construed to mean and refer to the "Colin Anderson Center."

The control of the property, records, and financial and other affairs of state mental hospitals and other state mental

health facilities is transferred from the Department of Mental Health to the Department of Health and Human Resources. The secretary shall, in respect to the control and management of the state hospitals and other state mental health facilities, perform the same duties and functions as were heretofore exercised or performed by the Director of Health. The title to all property of the state hospitals and other state facilities is transferred to and vested in the Department of Health and Human Resources.

Notwithstanding any other provisions of this code to the contrary, whenever in this code there is a reference to the Department of Mental Health, it shall be construed to mean and is a reference to the Secretary of the Department of Health and Human Resources.

ARTICLE 2A. MENTAL HEALTH - INTELLECTUAL DISABILITY CENTERS.

§27-2A-1. Comprehensive community mental health-intellectual disability centers; establishment, operation and location; access to treatment.

(a) The Department of Health and Human Resources is authorized and directed to establish, maintain and operate comprehensive community mental health centers and comprehensive intellectual disability facilities, at locations within the state that are determined by the secretary in accordance with the state's comprehensive mental health plan and the state's comprehensive intellectual disability plan. Such facilities may be integrated with a general health care or other facility or remain separate as the Secretary of the Department of Health and Human Resources may by rules prescribe: *Provided,* That nothing contained herein may be construed to allow the Department of Health and Human Resources to assume the operation of comprehensive regional mental health centers or comprehensive intellectual disability facilities which have been heretofore established according

16 to law and which, as of the effective date of this article, are
17 being operated by local nonprofit organizations.

18 (b) Any new mental health centers and comprehensive
19 mental retardation facilities herein provided may be operated
20 and controlled by the Department of Health and Human
21 Resources or operated, maintained and controlled by local
22 nonprofit organizations and licensed according to rules
23 promulgated by the Secretary of the Department of Health
24 and Human Resources. All comprehensive regional mental
25 health and intellectual disability facilities licensed in the state
26 shall:

27 (1) Have a written plan for the provision of diagnostic,
28 treatment, supportive and aftercare services, and written
29 policies and procedures for implementing these services;

30 (2) Have sufficient employees appropriately qualified to
31 provide these services;

32 (3) Maintain accurate medical and other records for all
33 patients receiving services;

34 (4) Render outpatient services in the aftercare of any
35 patient discharged from an inpatient hospital, consistent with
36 the needs of the individual. No person who can be treated as
37 an outpatient at a community mental health center may be
38 admitted involuntarily into a state hospital.

39 (5) Have a chief administrative officer directly
40 responsible to a legally constituted board of directors of a
41 comprehensive mental health or intellectual disability facility
42 operated by a local nonprofit organization, or to the Secretary
43 of the Department of Health and Human Resources if the
44 comprehensive mental health or intellectual disability center
45 or facility is operated by the Department of Health and
46 Human Resources; and

47 (6) Have a written plan for the referral of patients for
48 evaluation and treatment for services not provided.

49 The state's share of costs of operating the facilities may
50 be provided from funds appropriated for this purpose within
51 the budget of the Department of Health and Human
52 Resources. The Secretary of the Department of Health and
53 Human Resources shall administer these funds among all
54 comprehensive mental health and intellectual disability
55 facilities that are required to best provide comprehensive
56 community mental health care and services to the citizens of
57 the state.

58 After July 1, but not later than August 1 of each year, the
59 chief administrative officer of each comprehensive regional
60 mental health center and intellectual disability facility shall
61 submit a report to the Secretary of the Department of Health
62 and Human Resources and to the Legislative Auditor
63 containing a listing of:

64 (1) All funds received by the center or facility;

65 (2) All funds expended by the center or facility;

66 (3) All funds obligated by the center or facility;

67 (4) All services provided by the center or facility;

68 (5) The number of persons served by the center or
69 facility; and

70 (6) Other information as the Secretary of the Department
71 of Health and Human Resources prescribes by regulation.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-9. Rights of patients.

(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less frequently than once every three months;

(3) Periodic physical examination by a physician no less frequently than once every six months; and

(4) Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

31 (d) The chief medical officer shall cause to be developed
32 within the clinical record of each patient a written treatment
33 plan based on initial medical and psychiatric examination not
34 later than seven days after he or she is admitted for treatment.
35 The treatment plan shall be updated periodically, consistent
36 with reevaluation of the patient. Failure to accord the patient
37 the requisite periodic examinations or treatment plan and
38 reevaluations entitles the patient to release.

39 (e) A clinical record shall be maintained at a mental
40 health facility for each patient treated by the facility. The
41 record shall contain information on all matters relating to the
42 admission, legal status, care and treatment of the patient and
43 shall include all pertinent documents relating to the patient.
44 Specifically, the record shall contain results of periodic
45 examinations, individualized treatment programs, evaluations
46 and reevaluations, orders for treatment, orders for application
47 for mechanical restraint and accident reports, all signed by
48 the personnel involved.

49 (f) Every patient, upon his or her admission to a hospital
50 and at any other reasonable time, shall be given a copy of the
51 rights afforded by this section.

52 (g) The Secretary of the Department of Health and
53 Human Resources shall propose rules for legislative approval
54 in accordance with the provisions of article three, chapter
55 twenty-nine-a of this code to protect the personal rights of
56 patients not inconsistent with this section.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of health; regulations.

1 No hospital, center or institution, or part of any hospital,
2 center or institution, to provide inpatient, outpatient or other
3 service designed to contribute to the care and treatment of the
4 mentally ill or intellectually disabled, or prevention of such

disorders, may be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor is first obtained from the Secretary of the Department of Health and Human Resources. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the secretary may require. The secretary may make such terms and regulations in regard to the conduct of any licensed hospital, center or institution, or part of any licensed hospital, center or institution, as he or she thinks proper and necessary. The secretary, or any person authorized by the secretary has authority to investigate and inspect any licensed hospital, center or institution, or part of any licensed hospital, center or institution, and the secretary may revoke the license of any hospital, center or institution, or part of any hospital, center or institution, for good cause after reasonable notice to the superintendent or other person in charge of the hospital, center or institution.

ARTICLE 12. OFFENSES.

§27-12-1. Malicious making of medical certificate or complaint as to mental condition.

Any physician who signs a certificate respecting the mental condition of any person without having made the examination as provided by this chapter, or makes any statement in any such certificate maliciously for the purpose of having such person declared mentally ill, intellectually disabled or an inebriate, and any person who maliciously makes application to any circuit court or mental hygiene commission for the purpose of having another person declared mentally ill, intellectually disabled, or an inebriate, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding $500, or imprisoned not exceeding one year, or both fined and imprisoned at the discretion of the court.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 15. STATE COMMISSION ON INTELLECTUAL DISABILITY.

§29-15-1. Creation and composition.
§29-15-5. Purposes.
§29-15-6. State agency for federal intellectual disability program.

§29-15-1. Creation and composition.

1 There is created the State Commission on Intellectual
2 Disability hereinafter referred to as the commission.

3 Pursuant to subsection (g), section one, article two,
4 chapter five-f of this code, the commission created by this
5 section is now incorporated into and administered as part of
6 the Department of Health and Human Resources. All
7 references to the commission in this article shall be construed
8 to mean the Department of Health and Human Resources.

§29-15-5. Purposes.

1 The Department of Health and Human Resources shall
2 take action to carry out the following purposes:

3 (a) Plan for and take other steps leading to
4 comprehensive state and community action to combat
5 intellectual disability.

6 (b) Determine what action is needed to combat
7 intellectual disability in the state and the resources available
8 for this purpose.

9 (c) Develop public awareness of the intellectual disability
10 problem and of the need for combating it.

11 (d) Coordinate state and local activities relating to the
12 various aspects of intellectual disability and its prevention,
13 treatment, or amelioration.

14 (e) Consult with and advise the Governor and Legislature
15 on all aspects of intellectual disability.

16 (f) Consult with and advise state agencies, boards or
17 departments with intellectual disability responsibilities
18 relative to the effective discharge of such responsibilities.

§29-15-6. State agency for federal intellectual disability program.

1 The Department of Health and Human Resources is
2 designated and established as the sole state agency for
3 receiving appropriations under and carrying out the purposes
4 of section five of Public Law 88-156, eighty-eighth Congress
5 approved October 24, 1963, and any law amending, revising,
6 supplementing or superseding section five of said Public Law
7 88-156.

8 The department constitutes the designated state agency
9 for handling all programs of the federal government relating
10 to intellectual disability requiring action within the state
11 which are not the specific responsibility of another state
12 agency under the provisions of federal law, rules or
13 regulations, or which have not been specifically entrusted to
14 another state agency by the Legislature.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-1. Short title and legislative findings.
§44A-1-2. Determinations and appointments under prior law.

§44A-1-1. Short title and legislative findings.

1 This chapter is known and may be cited as the "West
2 Virginia Guardianship and Conservatorship Act."

3 The Legislature finds that section six, article eight of the
4 Constitution of the State of West Virginia gives it the
5 discretionary authority to pass legislation which "...provides
6 that all matters of probate, the appointment and qualification
7 of personal representatives, guardians, committees and
8 curators, and the settlements of their accounts..." be under the
9 exclusive jurisdiction of circuit courts. The Legislature
10 further finds and declares that the use of the word "all" does
11 not require an interpretation that the Legislature must place
12 every aspect of such matters with circuit courts, but, that
13 because of the discretionary authority given, the Legislature
14 may transfer, from time to time, only those matters which it
15 believes would be better served under the jurisdiction of
16 circuit courts.

17 The Legislature further finds and declares that legal
18 proceedings requiring a tribunal to determine whether
19 persons should be appointed to manage the personal or
20 financial affairs of individuals deemed mentally incompetent,
21 intellectually disabled, mentally handicapped or missing
22 involve considerations of constitutionally protected rights
23 which can best be resolved within the circuit courts of this
24 state.

§44A-1-2. Determinations and appointments under prior law.

1 (a) Any person determined to be "mentally incompetent",
2 "intellectually disabled" or "mentally handicapped" and for
3 such reason deemed to be in need of a guardian or committee
4 pursuant to any order entered and in effect before the

5 effective date of this chapter is deemed to be a "protected
6 person" within the meaning of this chapter, after its effective
7 date, unless any such determination be revoked or otherwise
8 modified.

9 (b) Any person heretofore appointed to serve as a
10 committee for an incompetent person and any person
11 appointed to serve as a guardian for an individual with an
12 intellectual disability or for a mentally handicapped person,
13 is, as of the effective date of this chapter, deemed to be: (1)
14 A guardian, within the meaning of this chapter, if the order
15 appointing such person provides that the person so appointed
16 has responsibility only for the personal affairs of a mentally
17 incompetent, intellectually disabled or mentally handicapped
18 person; (2) a conservator, within the meaning of this chapter,
19 if the order appointing such person provides that the person
20 so appointed had responsibility only for managing the estate
21 and financial affairs of a mentally incompetent intellectually
22 disabled or mentally handicapped person; or (3) a guardian
23 and a conservator, within the meaning of this chapter, if the
24 order appointing such person does not set forth limitations of
25 responsibility for both the personal affairs and the financial
26 affairs of a mentally incompetent intellectually disabled, or
27 mentally handicapped person.

28 (c) After the effective date of this chapter, the circuit
29 courts have exclusive jurisdiction of all matters involving
30 determinations of mental incompetency, intellectual disability
31 or mental handicap, including the jurisdiction of any
32 proceedings pending as of that effective date. All orders
33 entered before the effective date of this chapter in those cases
34 shall remain in full force and effect until terminated, revoked
35 or modified as provided herein.

36 (d) All persons heretofore appointed to serve as a
37 committee or as a guardian retain their authority, powers and

38 duties in that capacity, except to the extent that their
39 authority, powers and duties as guardian or conservator under
40 the provisions of this chapter are more specifically
41 enumerated, in which event the committee or guardian has
42 the authority, powers and duties so enumerated.

43 Wherever in the Constitution, the Code of West Virginia,
44 Acts of the Legislature or elsewhere in law a reference is
45 made to a committee for an incompetent person, such
46 reference shall be read, construed and understood to mean
47 guardian and/or conservator as defined in this chapter.

48 (e) The provisions of this chapter providing for the
49 presentation of reports by guardians and the presentation of
50 accountings by conservators may not be retroactively applied,
51 and applicable law in effect before the effective date of this
52 chapter controls as to any reports or accountings to be made
53 or filed for any period before the effective date of this
54 chapter.

55 (f) As used in this section, "prior law" refers to article
56 eleven, chapter twenty-seven of this code, relating to the
57 appointment of committees for mentally incompetent
58 persons, and to article ten-a, chapter forty-four, relating to the
59 appointment of guardians for individuals with an intellectual
60 disability and mentally handicapped persons, as those articles
61 were in effect before the effective date of this chapter.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4A. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-4A-6. Regional and state family support councils.

1 (a) Each regional family support agency shall establish a
2 regional family support council comprised of at least seven
3 members, of whom at least a majority shall be persons with
4 developmental disabilities or their parents or primary
5 caregivers. Each regional family support council shall meet
6 at least quarterly to advise the regional family support agency
7 on matters related to local implementation of the family
8 support program and to communicate information and
9 recommendations regarding the family support program to
10 the state Family Support Council.

11 (b) The Secretary of the Department of Health and
12 Human Resources shall appoint a state Family Support
13 Council comprised of at least twenty-two members, of whom
14 at least a majority shall be persons with developmental
15 disabilities or their parents or primary caregivers. A
16 representative elected by each regional council shall serve on
17 the state council. The state council shall also include a
18 representative from each of the following agencies: The state
19 Developmental Disabilities Council, the state Protection and
20 Advocacy Agency, the Center for Excellence in Disabilities,
21 the Office of Special Education, the Behavioral Health Care
22 Providers Association and the Early Intervention Interagency
23 Coordinating Council.

24 (c) The state council shall meet at least quarterly. The
25 state council will participate in the development of program
26 policies and procedures, annual contracts and perform such
27 other duties as are necessary for statewide implementation of
28 the family support program.

29 (d) Members of the state and regional councils who are
30 a member of the family or the primary caregiver of a
31 developmentally disabled person shall be reimbursed for
32 travel and lodging expenses incurred in attending official
33 meetings of their councils. Child care expenses related to the
34 developmentally disabled person shall also be reimbursed.
35 Members of regional councils who are eligible for expense

36 reimbursement shall be reimbursed by their respective
37 regional family support agencies.

CHAPTER 15

(S. B. 1003 - By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed May 16, 2010; in effect from passage.]
[Approved by the Governor on June 3, 2010.]

AN ACT to amend and reenact §15-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-10-3 of said code; to amend and reenact §15-10A-2 of said code; to amend and reenact §17-24A-1 and §17-24A-2 of said code; to amend and reenact §17A-3-23 of said code; to amend and reenact §17C-4-16 of said code, as contained in Chapter 173, Acts of the Legislature, Regular Session, 2010; to amend and reenact §17C-5-4 of said code; to amend and reenact §18B-10-7 of said code; to amend and reenact §19-20A-7 of said code; to amend and reenact §20-1-13 of said code; to amend and reenact §20-2-5, §20-2-15, §20-2-16, §20-2-22, §20-2-22a, §20-2-56a and §20-2-57a of said code; to amend and reenact §20-2-7 of said code, as contained in Chapter 141, Acts of the Legislature, Regular Session, 2010; to amend and reenact §20-7-1, §20-7-1a, §20-7-1b, §20-7-1c, §20-7-1d, §20-7-1e, §20-7-1f, §20-7-2, §20-7-3, §20-7-4 and §20-7-12b of said code; to amend and reenact §22-15A-19 of said code; to amend and reenact §29-2A-11a of said code; to amend and reenact §29-3-12 of said code; to amend and reenact §30-29-1 of said code; and to amend and reenact §36-8A-1 of said code, all relating generally to conservation officers; renaming conservation officers and fish and game wardens as natural

resources police officers; renaming the chief conservation officer as the chief natural resources police officer; clarifying that certain provisions of the West Virginia Code are inapplicable to the pensions of natural resources police officers paid through the Public Employees Retirement System; and making technical amendments throughout.

Be it enacted by the Legislature of West Virginia:

That §15-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §15-10-3 of said code be amended and reenacted; that §15-10A-2 of said code be amended and reenacted; that §17-24A-1 and §17-24A-2 of said code be amended and reenacted; that §17A-3-23 of said code be amended and reenacted; that §17C-4-16 of said code, as contained in Chapter 173, Acts of the Legislature, Regular Session, 2010, be amended and reenacted; that §17C-5-4 of said code be amended and reenacted; that §18B-10-7 of said code be amended and reenacted; that §19-20A-7 of said code be amended and reenacted; that §20-1-13 of said code be amended and reenacted; that §20-2-5, §20-2-15, §20-2-16, §20-2-22, §20-2-22a, §20-2-56a and §20-2-57a of said code be amended and reenacted; that §20-2-7 of said code, as contained in Chapter 141, Acts of the Legislature, Regular Session, 2010, be amended and reenacted; that §20-7-1, §20-7-1a, §20-7-1b, §20-7-1c, §20-7-1d, §20-7-1e, §20-7-1f, §20-7-2, §20-7-3, §20-7-4 and §20-7-12b of said code be amended and reenacted; that §22-15A-19 of said code be amended and reenacted; that §29-2A-11a of said code be amended and reenacted; that §29-3-12 of said code be amended and reenacted; that §30-29-1 of said code be amended and reenacted; and that §36-8A-1 of said code be amended and reenacted, all to read as follows:

Chapter

15. Public Safety.

17. Roads and Highways.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17C. Traffic Regulations and Laws of the Road.

18B. High Education.

19. Agriculture.
20. Natural Resources.
22. Environmental Resources.
29. Miscellaneous Boards and Officers.
30. Professions and Occupations.
36. Estates and Property.

CHAPTER 15. PUBLIC SAFETY.

Article
2. West Virginia State Police.
10. Cooperation Between Law-Enforcement Agencies.
10A. Law-Enforcement Reemployment Act.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-12. Mission of the State Police; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia State Police shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.

(b) The superintendent and each of the officers and members of the division are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, to make arrests without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever a complaint is made and a warrant is issued thereon for the arrest, and the person arrested shall be immediately brought before the proper tribunal for examination and trial in the county where the offense for which the arrest has been made was committed;

(2) To serve criminal process issued by any court or magistrate anywhere within this state: *Provided,* That they may not serve civil process; and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the Division of Highways, Division of Motor Vehicles and of West Virginia State Police for any license, permit or certificate that may be lawfully issued by these divisions of state government.

(c) Members of the West Virginia State Police are hereby designated as forest patrolmen and natural resources police officers throughout the state to do and perform any duties and exercise any powers of forest patrolmen and natural resources police officers, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code. The West Virginia State Police is at any time subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of an officer in civil matters.

(d) Any member of the West Virginia State Police knowing or having reason to believe that any person has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for

the offender, execute the warrant and bring the person before the proper tribunal having jurisdiction. The member shall make return on all warrants to the tribunals and his or her official title shall be "Member of the West Virginia State Police". Members of the West Virginia State Police may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before the tribunal and make return thereon as provided by law. Any return by a member of the West Virginia State Police showing the manner of executing the warrant or process has the same force and effect as if made by a sheriff.

(e) Each member of the West Virginia State Police, when called by the sheriff of any county, or when directed by the Governor by proclamation, has full power and authority within the county, or within the territory defined by the Governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, natural resources police officer and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When called, any officer or person is, during the time his or her assistance is required, for all purposes a member of the West Virginia State Police and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section of any turnpike or toll road, operated by the West Virginia Parkways, Economic Development and Tourism Authority: *Provided,* That the authority shall reimburse the West Virginia State Police for salaries paid to the members and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual or estimated costs determined by the superintendent.

(g) The West Virginia State Police may develop proposals for a comprehensive county or multicounty plan on the implementation of an enhanced emergency service telephone system and may cause a public meeting on the proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) By July 1, 1993, the superintendent shall establish a network to implement reports of the disappearance of children by local law-enforcement agencies to local school division superintendents and the State Registrar of Vital Statistics. The network shall be designed to establish cooperative arrangements between local law-enforcement agencies and local school divisions concerning reports of missing children and notices to law-enforcement agencies of requests for copies of the cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the State Registrar of Vital Statistics.

(i) The superintendent may at his or her discretion and upon the written request of the West Virginia Alcohol Beverage Control Commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

(j) Notwithstanding the provisions of article one-a, chapter twenty of this code, the Superintendent of the West Virginia State Police may sell any surplus real property to which the West Virginia State Police or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the West Virginia State Police. There is hereby created a special revolving fund in the State Treasury which shall be designated as the "Surplus Real Property Proceeds Fund". The fund shall consist of all

money received from the sale of surplus real property owned by the West Virginia State Police. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: *Provided,* That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(k) Notwithstanding any other provision of this code, the agency for surplus property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment and commodities belonging to the West Virginia State Police to a special revenue account within the West Virginia State Police entitled the West Virginia State Police surplus transfer account. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: *Provided,* That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Any funds transferred to this account may be utilized by the superintendent to defray the cost of normal operating needs of the division.

(l) If the State Police or any other law-enforcement agency in this state receives a report that a person who has Alzheimer's disease and related dementia is missing, the State Police or any other law-enforcement agency shall immediately open an investigation for the purpose of determining the whereabouts of that missing person. Any policy of the State Police or any other law-enforcement agency relating to a waiting period prior to initiation of an investigation of a missing person does not apply in the case of a person who has Alzheimer's disease or other related dementia of the type referred to in this subsection.

(m) Notwithstanding any provision of this code to the contrary, effective on and after July 1, 2007, the expenses and salaries paid to the members of the West Virginia State Police for the monitoring and enforcement duties defined in chapter seventeen-c of this code may not be paid from the State Road Fund or subject to reimbursement from the Division of Motor Vehicles but is subject to appropriation by the Legislature.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

For purposes of this article only, and unless a different meaning plainly is required:

(1) "Criminal justice enforcement personnel" means those persons within the state criminal justice system who are actually employed as members of the State Police, members of the Division of Protective Services, natural resources police officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies, and whose primary duties are the investigation of crime and the apprehension of criminals.

(2) "Head of a law-enforcement agency" means the Superintendent of the State Police, the Director of the Division of Protective Services, the chief natural resources police officer of the Division of Natural Resources, a chief of police of an incorporated municipality or a county sheriff.

(3) "State or local law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking

21 ordinances, and includes those persons employed as campus
22 police officers at state institutions of higher education in
23 accordance with the provisions of section five, article four,
24 chapter eighteen-b of this code, although those institutions
25 may not be considered law-enforcement agencies. The term
26 also includes those persons employed as rangers by the
27 Hatfield-McCoy Regional Recreation Authority in
28 accordance with the provisions of section six, article
29 fourteen, chapter twenty of this code, although the authority
30 is not a law-enforcement agency.

31 (4) "Head of campus police" means the superintendent or
32 administrative head of state or local law-enforcement officers
33 employed as campus police officers at state institutions of
34 higher education in accordance with the provisions of section
35 five, article four, chapter eighteen-b of this code.

36 (5) "Head of the rangers of the Hatfield-McCoy Regional
37 Recreation Authority" means the superintendent or
38 administrative head of state or local law-enforcement officers
39 employed as rangers by the Hatfield-McCoy Regional
40 Recreation Authority in accordance with the provisions of
41 section six, article fourteen, chapter twenty of this code.

ARTICLE 10A. LAW-ENFORCEMENT REEMPLOYMENT ACT.

§15-10A-2. Reemployment of law-enforcement officers.

1 (a) Notwithstanding any provision of this code to the
2 contrary, any honorably retired law-enforcement officer may,
3 at the discretion of the head of a law-enforcement agency, be
4 reemployed subject to the provisions of this article: *Provided,*
5 That a retired law-enforcement officer employed pursuant to
6 this article must be certified pursuant to article twenty-nine,
7 chapter thirty.

(b) Any person reemployed pursuant to the provisions of this article shall:

(1) Receive the same compensation as a regularly enlisted officer of the same rank;

(2) Receive credit for all years of service accrued prior to their retirement, as well as service rendered after the date of their reemployment;

(3) Exercise the same authority as a regularly enlisted officer of the law-enforcement agency;

(4) Wear the same uniform and insignia;

(5) Be subject to the same oath;

(6) Execute the same bond; and

(7) Exercise the same powers and be subject to the same limitations as a regularly enlisted officer of the law-enforcement agency.

(c) A person reemployed pursuant to the provisions of this article is ineligible for promotion or reclassification of any type nor eligible for appointment to a temporary rank.

(d) A person reemployed pursuant to the provisions of this article may be employed for a period not to exceed two years from the date on which he or she is hired.

(e) As used in this article:

(1) "Law-enforcement officer" or "officer" means: (A) Any sheriff and any deputy sheriff of any county; (B) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code;

34 and (C) any natural resources police officer of the Division
35 of Natural Resources; and

36 (2) "Head of a law-enforcement agency" means the chief
37 of police of an incorporated municipality; a county sheriff, or
38 the chief natural resources police officer of the Division of
39 Natural Resources.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§17-24A-1. Definitions.
§17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.

§17-24A-1. Definitions.

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

3 (1) "Commissioner" means the Commissioner of the
4 Division of Highways or his or her designee.

5 (2) "Abandoned household appliance" means a
6 refrigerator, freezer, range, stove, automatic dishwasher,
7 clothes washer, clothes dryer, trash compactor, television set,
8 radio, air conditioning unit, commode, bed springs, mattress
9 or other furniture, fixtures or appliances to which no person
10 claims ownership and which is not in an enclosed building,
11 a licensed salvage yard or the actual possession of a
12 demolisher.

13 (3) "Abandoned motor vehicle" means any motor vehicle,
14 or major part thereof, which is inoperative and which has

been abandoned on public property for any period over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period over five days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: *Provided,* That a motor vehicle, or major part thereof, is not an abandoned motor vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner's property; (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being stored; and (d) the owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

(4) "Demolisher" means any person licensed by the Commissioner of the Division of Highways whose business, to any extent or degree, is to convert a motor vehicle or any part thereof or an inoperative household appliance into processed scrap or scrap metal or into saleable parts or otherwise to wreck or dismantle vehicles or appliances.

(5) "Enclosed building" means a structure surrounded by walls or one continuous wall and having a roof enclosing the entire structure and includes a permanent appendage thereto.

(6) "Enforcement agency" means any of the following or any combination of the following:

(a) Public law-enforcement officers of this state, including natural resources police officers;

(b) Public law-enforcement officers of any county, city or town within this state; and

(c) The Commissioner of the Division of Highways, his or her duly authorized agents and employees.

(7) "Inoperative household appliance" means a refrigerator, freezer, range, stove, automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air conditioning unit, commode, bed springs, mattress or other furniture, fixture or appliance which by reason of mechanical or physical defects can no longer be used for its intended purpose and which is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher.

(8) "Junked motor vehicle" means a motor vehicle, or any part thereof which: (a) Is discarded, wrecked, ruined, scrapped or dismantled; (b) cannot pass the state inspection required by article sixteen, chapter seventeen-c of this code; and (c) is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: *Provided,* That a motor vehicle, or major part thereof, is not a junked motor vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner's property; (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being stored; and (d) the owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

(9) "Licensed salvage yard" means a salvage yard licensed under article twenty-three of this chapter.

(10) "Motor vehicle" means a vehicle which is or was self-propelled, including, but not limited to, automobiles, trucks, buses and motorcycles.

(11) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

§17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.

(a) No person may, within this state, abandon a motor vehicle or major part thereof upon the right-of-way of any public highway, upon any other public property or upon any private property without the consent of the owner or person in control of the property, or upon property owned or controlled by that person, unless it be at a licensed salvage yard or at the business establishment of a demolisher, or a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced and fined as set forth below.

(b) No person may, within this state, place or abandon any inoperative household appliance upon the right-of-way of any public highway or upon any other public property; nor may any person, within this state, place or abandon any inoperative household appliance upon any private property unless it be at a licensed salvage yard, solid waste facility, other business authorized to accept solid waste or at the business establishment of a demolisher. Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced and fined as set forth below.

(c) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle, or inoperative household appliance

does not exceed one hundred pounds in weight or twenty-seven cubic feet in size is subject to a fine of not less than $50 nor more than $1,000 or, in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(d) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle or inoperative household appliance is greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet, is subject to a fine of not less than $500 nor more than $2,000 or, in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(e) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle or inoperative household appliance is greater than five hundred pounds in weight or two hundred sixteen cubic feet in size is subject to a fine not less than $2,500 or not more than $25,000 or confinement in jail for not more than one year, or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(f) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(g) The sentence of litter cleanup shall be verified by natural resources police officers from the Division of Natural Resources or environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter cleanup shall provide within a time to be set by the court written acknowledgment from a natural resources police officer or environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(h) Any person who has been found by the court to have willfully failed to comply with the terms of a litter cleanup sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management,

10 vehicles operated by natural resources police officers of the
11 Division of Natural Resources, not to exceed ten vehicles
12 operated by the arson investigators of the office of State Fire
13 Marshal, not to exceed two vehicles operated by the Division
14 of Protective Services, not to exceed sixteen vehicles
15 operated by inspectors of the office of the Alcohol Beverage
16 Control Commissioner and vehicles operated by probation
17 officers employed under the Supreme Court of Appeals may
18 not be operated or driven by any person unless it has
19 displayed and attached to the front thereof, in the same
20 manner as regular motor vehicle registration plates are
21 attached, a plate of the same size as the regular registration
22 plate, with white lettering on a green background bearing the
23 words "West Virginia" in one line and the words "State Car"
24 in another line and the lettering for the words "State Car"
25 shall be of sufficient size to be plainly readable from a
26 distance of one 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 December 31, 2006, registration plates
38 issued to a city or municipality law-enforcement department
39 shall include blue lettering on a white background with the
40 word "West Virginia" on top of the plate and shall be further
41 designed by the commissioner to include a law-enforcement
42 shield together with other insignia or lettering sufficient to
43 identify the motor vehicle as a municipal law-enforcement
44 department motor vehicle. The colors may not be reversed
45 and shall be of reflectorized material. The registration plates

issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles. Every municipality shall provide the commissioner with a list of law-enforcement vehicles operated by the law-enforcement department of the municipality, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2006.

(c) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs' association with the word "Sheriff" on top of the plate and the words "West Virginia" on the bottom. The plate shall contain a gold shield representing the sheriff's star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(d) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

(e) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(f) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the State of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested

79 will be used only for official undercover work conducted by
80 a drug and violent crime task force.

81 (g) The commissioner is authorized to issue twenty Class
82 A license plates to the Criminal Investigation Division of the
83 Department of Revenue for use by its investigators.

84 (h) The commissioner may issue a maximum of ten Class
85 A license plates to the Division of Natural Resources for use
86 by natural resources police officers. The commissioner shall
87 designate the color and design of the registration plates to be
88 displayed on the front and the rear of all other state-owned
89 vehicles owned by the Division of Natural Resources and
90 operated by natural resources police officers.

91 (i) The commissioner is authorized to issue an unlimited
92 number of Class A license plates to the Commission on
93 Special Investigations for state-owned vehicles used for
94 official undercover work conducted by the Commission on
95 Special Investigations. The commissioner is authorized to
96 issue a maximum of two Class A plates to the Division of
97 Protective Services for state-owned vehicles used by the
98 Division of Protective Services in fulfilling its mission.

99 (j) No other registration plate may be issued for, or
100 attached to, any state-owned vehicle.

101 (k) The Commissioner of Motor Vehicles shall have a
102 sufficient number of both front and rear plates produced to
103 attach to all state-owned cars. The numbered registration
104 plates for the vehicles shall start with the number "five
105 hundred" and the commissioner shall issue consecutive
106 numbers for all state-owned cars.

107 (l) It is the duty of each office, department, bureau,
108 commission or institution furnished any vehicle to have
109 plates as described herein affixed thereto prior to the
110 operation of the vehicle by any official or employee.

111 (m) The commissioner may issue special registration
112 plates for motor vehicles titled in the name of the Division of
113 Public Transit or in the name of a public transit authority as
114 defined in this subsection and operated by a public transit
115 authority or a public transit provider to transport persons in
116 the public interest. For purposes of this subsection, "public
117 transit authority" means an urban mass transportation
118 authority created pursuant to the provisions of article
119 twenty-seven, chapter eight of this code or a nonprofit entity
120 exempt from federal and state income taxes under the
121 Internal Revenue Code and whose purpose is to provide mass
122 transportation to the public at large. The special registration
123 plate shall be designed by the commissioner and shall display
124 the words "public transit" or words or letters of similar effect
125 to indicate the public purpose of the use of the vehicle. The
126 special registration plate shall be issued without charge.

127 (n) Any person who violates the provisions of this section
128 is guilty of a misdemeanor and, upon conviction thereof,
129 shall be fined not less than $50 nor more than $100.
130 Magistrates have concurrent jurisdiction with circuit courts
131 for the enforcement of this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article
4. Crashes.
5. Serious Traffic Offenses.

ARTICLE 4. CRASHES.

§17C-4-16. Crashes involving state and municipal property; reports to be provided.

1 Whenever a report of a motor vehicle crash prepared by
2 a member of the West Virginia State Police, natural resources
3 police officer of the Division of Natural Resources, a member

of a county sheriff's department or a municipal police officer, in the regular course of their duties, indicates that as a result of the crash damage has occurred to any bridge, sign, guardrail or other property, exclusive of licensed motor vehicles, a copy of the report shall, in the case of property belonging to the Division of Highways, be provided to the Commissioner of the Division of Highways, and, in the case of property belonging to a municipality, be provided to the mayor of that municipality. The copies of the reports shall be provided to the commissioner or mayor, as applicable, without cost to them.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who drives a motor vehicle in this state is considered to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood.

(b) A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(c) A secondary test of blood, breath or urine is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person has committed an offense prohibited by section two of this article or by an ordinance of

19 a municipality of this state which has the same elements as an
20 offense described in section two of this article.

21 (d) The law-enforcement agency that employs the
22 law-enforcement officer shall designate which type of
23 secondary test is to be administered: *Provided,* That if the test
24 designated is a blood test and the person arrested refuses to
25 submit to the blood test, then the law-enforcement officer
26 making the arrest shall designate either a breath or urine test
27 to be administered. Notwithstanding the provisions of
28 section seven of this article, the refusal to submit to a blood
29 test only may not result in the revocation of the arrested
30 person's license to operate a motor vehicle in this state.

31 (e) Any person to whom a preliminary breath test is
32 administered who is then arrested shall be given a written
33 statement advising him or her that his or her refusal to submit
34 to the secondary chemical test pursuant to subsection (d) of
35 this section, will result in the revocation of his or her license
36 to operate a motor vehicle in this state for a period of at least
37 one year and up to life.

38 (f) Any law-enforcement officer who has been properly
39 trained in the administration of any secondary chemical test
40 authorized by this article, including, but not limited to,
41 certification by the Bureau for Public Health in the operation
42 of any equipment required for the collection and analysis of
43 a breath sample, may conduct the test at any location in the
44 county wherein the arrest is made: *Provided,* That the
45 law-enforcement officer may conduct the test at the nearest
46 available properly functioning secondary chemical testing
47 device located outside the county in which the arrest was
48 made, if: (i) There is no properly functioning secondary
49 chemical testing device located within the county the arrest
50 was made; or (ii) there is no magistrate available within the
51 county the arrest was made for the arraignment of the person
52 arrested. A law-enforcement officer who is directing that a
53 secondary chemical test be conducted has the authority to

transport the person arrested to where the secondary chemical testing device is located.

(g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.

(h) Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

(i) For the purpose of this article, the term "law-enforcement officer" or "police officer" means: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; (4) any natural resources police officer of the Division of Natural Resources; and (5) any special police officer appointed by the Governor pursuant to the provisions of section forty-one, article three, chapter sixty-one of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of section nine, article twenty-nine, chapter thirty of this code.

(j) A law-enforcement officer who has reasonable cause to believe that person has committed an offense prohibited by section eighteen, article seven, chapter twenty of this code, relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the provisions of this section in administering, or causing to be administered, a preliminary

88 breath analysis and the secondary chemical test of the
89 accused person's blood, breath or urine for the purpose of
90 determining alcohol content of his or her blood.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

1 (a) Each state institution of higher education shall waive
2 tuition and fees for any person who is the child or spouse of
3 an individual who:

4 (1) Was employed or serving as:

5 (A) A law-enforcement officer as defined in section one,
6 article twenty-nine, chapter thirty of this code;

7 (B) A correctional officer at a state penal institution;

8 (C) A parole officer;

9 (D) A probation officer;

10 (E) A natural resources police officer; or

11 (F) A registered firefighter; and

12 (2) Was killed in the line of duty while:

13 (A) Employed by the state or any political subdivision of
14 the state; or

15 (B) A member of a volunteer fire department serving a
16 political subdivision of this state.

17 (b) Each state institution of higher education shall waive
18 tuition and fees for any person who is the child or spouse of:

19 (1) A National Guard member or a member of a reserve
20 component of the Armed Forces of the United States who is
21 a resident of this state and is killed in the line of duty. The
22 member is considered to have been killed in the line of duty
23 if death resulted from performing a duty required by his or
24 her orders or commander while in an official duty status,
25 other than on federal active duty, authorized under federal or
26 state law; or

27 (2) A person on federal or state active military duty who
28 is a resident of this state and is killed in the line of duty. The
29 person is considered to have been killed in the line of duty if
30 death resulted from performance of a duty required by his or
31 her orders or commander while in an official duty status.

32 (c) Any waiver granted pursuant to this section is subject
33 to the following:

34 (1) The recipient may attend any undergraduate course if
35 classroom space is available;

36 (2) The recipient has applied and been admitted to the
37 institution;

38 (3) The recipient has applied for and submitted the Free
39 Application for Federal Student Aid;

40 (4) The recipient has exhausted all other sources of
41 student financial assistance dedicated solely to tuition and
42 fees that exceed other grant assistance that are available to
43 him or her, excluding student loans;

(5) Waiver renewal is contingent upon the recipient continuing to meet the academic progress standards established by the institution.

(d) The state institution of higher education may require the person to pay:

(1) Special fees, including any laboratory fees, if the fees are required of all other students taking a single course or that particular course; and

(2) Parking fees.

(e) The governing boards may promulgate rules:

(1) For determining the availability of classroom space;

(2) As each considers necessary to implement this section; and

(3) Regarding requirements for attendance, which may not exceed the requirements for other students.

(f) The governing boards may extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.

CHAPTER 19. AGRICULTURE.

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-7. Enforcement of article.

The enforcement of the provisions of this article is in the hands of the sheriff of each county, any of his or her

deputies, constables, natural resources police officers, and, if considered necessary, there shall be a special officer to be appointed by the county commission, who is authorized, empowered, and directed to inspect rabies, pick up dogs and cats and dispose of dogs which are not taxable or not vaccinated according to this article. The sheriff of each county can have one or more sittings, if considered necessary, in each district of the county, at which he or she shall be present or have present one of his or her deputies or the special officer above provided for, to take charge of all delinquent dogs and cats and homeless dogs and cats that are not vaccinated. The assessor of each county, or one of his or her deputies, shall accompany the veterinarian, doctor, or the one who administers the vaccine in these sittings for the purpose of collecting taxes on dogs. All dogs which are not vaccinated and for which taxes are unpaid become the responsibility of the sheriff to catch and dispose of as is provided by law.

CHAPTER 20. NATURAL RESOURCES.

Article

1. **Organization and Administration.**
2. **Wildlife Resources.**
7. **Law Enforcement, Motorboating, Litter.**

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-13. Law enforcement and legal services.

The director shall select and designate a competent and qualified person to be the chief natural resources police officer, who has the title of colonel and who is responsible for the prompt, orderly and effective enforcement of all of the provisions of this chapter. Under the supervision of the director and subject to personnel qualifications and requirements otherwise prescribed in this chapter, the chief natural resources police officer is responsible for the

selection, training, assignment, distribution and discipline of natural resources police officers and the effective discharge of their duties in carrying out the law-enforcement policies, practices and programs of the division in compliance with the provisions of article seven of this chapter and other controlling laws. Except as otherwise provided in this chapter, natural resources police officers are authorized to enter into and upon private lands and waters to investigate complaints and reports of conditions, conduct, practices and activities considered to be adverse to and violative of the provisions of this chapter and to execute writs and warrants and make arrests thereupon.

The Attorney General and his or her assistants and the prosecuting attorneys of the several counties shall render to the director, without additional compensation, legal services as the director may require of them in the discharge of his or her duties and the execution of his or her powers under and his or her enforcement of the provisions of this chapter. The director, in an emergency and with prior approval of the Attorney General, may employ an attorney to act in proceedings wherein criminal charges are brought against personnel of the department because of action in line of duty. For the attorney services, a reasonable sum, not exceeding $2,500, may be expended by the director in any one case.

The director, if he or she considers the action necessary, may request the Attorney General to appoint an assistant attorney general, who shall perform, under the supervision and direction of the Attorney General, the duties as may be required of him or her by the director. The Attorney General, in pursuance of the request, may select and appoint an assistant attorney general to serve at the will and pleasure of the Attorney General, and the assistant shall receive a salary to be paid out of any funds made available for that purpose by the Legislature to the department.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.
§20-2-7. Hunting, trapping or fishing on lands of another; damages and restitution.
§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.
§20-2-16. Dogs chasing deer.
§20-2-22. Tagging, removing, transporting and reporting bear, bobcat, deer, wild boar and wild turkey.
§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.
§20-2-56a. Bird dog training permit.
§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the director, it is unlawful at any time for any person to:

(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

(2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: *Provided,* That it is lawful to hunt or take raccoon, opossum or skunk by the use of artificial light

subject to the restrictions set forth in this subdivision: *Provided, however,* That it is lawful to hunt or take coyotes by the use of amber- or red-colored artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $100 nor more than $500 and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state unless he or she has in his or her possession a permit in writing issued to him or her by the director: *Provided,* That this section does not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow, being lawfully carried in accordance with the foregoing provisions, may be so carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: *Provided,* That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday on

private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock antemeridian on that Sunday: *Provided,* That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a $100 fine;

(11) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the Director: *Provided,* That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(15) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the director or the sale of which is prohibited;

119 (16) Hunt, catch, take, kill, capture, pursue, transport,
120 possess or use any migratory game or nongame birds
121 included in the terms of conventions between the United
122 States and Great Britain and between the United States and
123 United Mexican States for the protection of migratory birds
124 and wild mammals concluded, respectively, August 16, 1916,
125 and February 7, 1936, except during the time and in the
126 manner and numbers prescribed by the federal Migratory
127 Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and regulations
128 made thereunder;

129 (17) Kill, take, catch or have in his or her possession,
130 living or dead, any wild bird other than a game bird; or
131 expose for sale or transport within or without the state any
132 bird except as aforesaid. No part of the plumage, skin or
133 body of any protected bird may be sold or had in possession
134 for sale except mounted or stuffed plumage, skin, bodies or
135 heads of the birds legally taken and stuffed or mounted,
136 irrespective of whether the bird was captured within or
137 without this state, except the English or European sparrow
138 (passer domesticus), starling (sturnus vulgaris) and cowbird
139 (molothrus ater), which may not be protected and the killing
140 thereof at any time is lawful;

141 (18) Use dynamite or any like explosive or poisonous
142 mixture placed in any waters of the state for the purpose of
143 killing or taking fish. Any person violating the provisions of
144 this subdivision is guilty of a felony and, upon conviction
145 thereof, shall be fined not more than $500 or imprisoned for
146 not less than six months nor more than three years, or both
147 fined and imprisoned;

148 (19) Have a bow and gun, or have a gun and any arrow or
149 arrows, in the fields or woods at the same time;

150 (20) Have a crossbow in the woods or fields or use a
151 crossbow to hunt for, take or attempt to take any wildlife,
152 unless the person possesses a Class Y permit;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the August 15 next following: *Provided,* That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: *Provided, however,* That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: *Provided further,* That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: *Provided,* That any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the

names and addresses of all persons participating in said trial and make same readily available for inspection by any natural resources police officer upon request;

(26) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the director as authorized by subdivision (6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian: *Provided,* That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized in _____ County?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: *Provided,* That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.

(29) Hunt or conduct hunts for a fee where the hunter is not physically present in the same location as the wildlife being hunted within West Virginia.

§20-2-7. Hunting, trapping or fishing on lands of another; damages and restitution.

(a) It is unlawful for any person to shoot, hunt, fish or trap upon the fenced, enclosed or posted lands of another person; or to peel trees or timber, build fires or do any other act in connection with shooting, hunting, fishing or trapping on the lands without written permission in his or her possession from the owner, tenant or agent of the owner.

(b) Any person who hunts, traps or fishes on land without the permission of the owner, tenant or agent of the owner is guilty of a misdemeanor and, liable to the owner or person suffering damage for all costs and damages for: (1) Killing or injuring any domestic animal, fowl, or private game farm animal; (2) cutting, destroying or damaging any bars, gates or fence or any part of the property; or (3) leaving open any bars or gates resulting in damage to the property.

(c) Restitution of the value of the property or animals injured, damaged or destroyed shall be required upon conviction pursuant to sections four and five, article eleven-a, chapter sixty-one of this code. The restitution ordered for private game farm animals shall be equivalent to or greater than the replacement values for deer listed in section five-a in this article.

(d) The owner, tenant or agent of the owner may arrest a person violating this section and immediately take him or her before a magistrate. The owner, tenant or agent of the owner is vested with the powers and rights of a natural resources police officer for these purposes. The officers charged with the enforcement of the provisions of this chapter shall

enforce the provisions of this section if requested to do so by the owner, tenant or agent of the owner, but not otherwise.

(e) The provisions of subsections (b) and (d) of this section related to criminal penalties and being subject to arrest are inapplicable to a person whose dog, without the person's direction or encouragement, travels onto the fenced, enclosed or posted land of another in pursuit of an animal or wild bird: *Provided,* That the pursuit does not result in the taking of game from the fenced, enclosed or posted land and does not result in the killing of domestic animals or fowl or other damage to or on the fenced, enclosed or posted land.

§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.

(a) Whenever it is found that deer or other wildlife are causing damage to cultivated crops, fruit trees, commercial nurseries, homeowners' trees, shrubbery or vegetable gardens, the owner or lessee of the lands on which damage is done may report the finding to the natural resources police officer or biologist of the county in which the lands are located or to the director. The director shall then investigate the reported damage and if found substantial, shall issue a permit to the owner or lessee to kill one or more deer or other wildlife in the manner prescribed by the director.

(b) In addition to the foregoing, the director shall establish procedures for the issuance of permits or other authorization necessary to control deer or other wildlife causing property damage.

(c) All persons attempting to kill deer or other wildlife pursuant to this section are subject to the same minimum caliber restrictions and other firearm restrictions and the same

minimum bow poundage and other bow and arrow restrictions that apply when hunting the same animal species during the regular hunting seasons.

§20-2-16. Dogs chasing deer.

No person may permit his or her dog to hunt or chase deer. A natural resources police officer shall take into possession any dog known to have hunted or chased deer and the director shall advertise that the dog is in his or her possession, giving a description of the dog and stating the circumstances under which it was taken. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for the publication is the county. He or she shall hold the dog for a period of ten days after the date of the publication. If, within ten days, the owner does not claim the dog, the director shall destroy it. In this event the cost of keeping and advertising shall be paid by the director. If, within ten days, the owner claims the dog, he or she may repossess it on the payment of costs of advertising and the cost of keep, not exceeding 50¢ per day. A natural resources police officer, or any officer or employee of the director authorized to enforce the provisions of this section, after a bona fide but unsuccessful effort to capture dogs detected chasing or pursuing deer, may kill the dogs.

§20-2-22. Tagging, removing, transporting and reporting bear, bobcat, deer, wild boar and wild turkey.

(a) Each person killing a bear, bobcat, deer, wild boar or wild turkey found in a wild state shall either attach a completed game tag to the animal or remain with the animal and have upon his or her person a completed game tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, bobcat, deer, wild boar or wild turkey from where it was killed, each person shall either attach a completed game tag to the animal or have upon his or her person a completed game tag.

(c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a game tag to the killed bear, bobcat, deer, wild boar or wild turkey. The game tag shall remain on the carcass until it is retagged by a natural resources police officer or an official checking station.

(d) If a person who does not possess a game tag kills a bear, bobcat, deer, wild boar or wild turkey, he or she shall make a tag. The tag shall bear the name, address and, if applicable, the license number of the hunter and the time, date and county of killing.

(e) The carcass of a wild turkey shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

(f) The fresh skin and head or carcass of the deer shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.

(g) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two-a of this article.

(h) For each violation of this section a person is subject to the penalties provided in this article.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) A person in any county of this state may not hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear and in the manner designated by rules promulgated by the Division of Natural Resources and as provided in this section. For the purposes of this section, bear parts include, but are not limited to, the pelt, gallbladder, skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours after the killing, deliver the bear or fresh skin to a natural resources police officer or checking station for tagging. A Division of Natural Resources tag shall be affixed to it before any part of the bear may be transported more than seventy-five miles from the point of kill. The Division of Natural Resources tag shall remain on the skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the Division of Natural Resources.

(c) It is unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with:

(A) A shotgun using ammunition loaded with more than one solid ball;

(B) A rifle of less than twenty-five caliber using rimfire ammunition; or

(C) A crossbow;

(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls other than as authorized in this section;

(4) To shoot at or kill:

(A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;

(B) Any bear accompanied by a cub; or

(C) Any bear cub so accompanied, regardless of its weight;

(5) To possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel;

(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the Division of Natural Resources for the hunting of bear;

(8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt once the bear is spotted and the chase has begun;

(9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section;

(10) To organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any

consideration whatsoever or any donation in money, goods or services in connection with a bear hunt notwithstanding the provisions of sections twenty-three and twenty-four of this article; or

(11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.

(d) The following provisions apply to bear destroying property:

(1) (A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any natural resources police officer of the Division of Natural Resources for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: *Provided,* That only the natural resources police officer or the wildlife biologist may determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: *Provided, however,* That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2) (A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the Director of the Division of Natural Resources. The report shall state whether or not the bear was hunted and destroyed and, if so, the sex, weight and estimated age of the bear. The report shall also include an appraisal of the property damage occasioned by the bear duly signed by three competent appraisers fixing the value of the property lost.

(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims under this section in accordance with article three, chapter twenty-nine-a of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the Division of Natural Resources.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value is the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(e) *Criminal penalties*. -- (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, which fine is not subject to suspension by the court, confined in jail not less than thirty nor more than one hundred days, or both fined and confined. Further, the person's hunting and fishing licenses shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,000 nor more than $7,500, which fine is not subject to suspension by the court, confined in jail not less than thirty days nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, which fine is not subject to suspension by the court, imprisoned in a correctional facility not less than one year nor more than five years, or both fined and imprisoned.

§20-2-56a. Bird dog training permit.

The director may issue a permit to train bird dogs on wild birds or game birds, provided:

(1) The fee for the permit is $10.

(2) The training shall be on private land containing a minimum of five acres in a single tract. The permittee must own the land, lease the land or have written permission of landowner for the training.

(3) The birds permitted to be used for the training of dogs are quail and pigeons. The quail must be purchased from a licensed commercial game farm. Pigeons may be purchased from a licensed commercial game farm or trapped within the state at any time as long as the person conducting the trapping is legally licensed to do so and also holds the appropriate permit. Each trap must be identified by a waterproof tag attached to the trap that bears the name, address and telephone number of the trapper.

(4) The permittee must retain the receipt for two years of all birds purchased from a commercial game farm licensee.

(5) The location where the birds are held and all records pertaining to the purchase and dates of training may be inspected by a natural resources police officer.

(6) No more than thirty birds may be held by the permittee at any given time. All birds must have a uniquely numbered leg band attached. The leg band must remain with the birds until consumption or until the birds are legally disposed.

(7) Birds held under this permit shall be housed and cared for in accordance with the requirements of applicable rules.

(8) The use of the birds held under this permit shall include the release, recapture and/or the shooting of the birds in conjunction with the training of bird dogs.

(9) The person holding birds in captivity under the authority of this permit and the person training his or her bird dog must possess a bird dog training permit.

(10) All other laws and rules governing hunting, trapping, shooting and training apply.

(11) The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to further restrict bird dog training.

(12) Any person violating any provision of this law is subject to the penalties prescribed in section nine, article seven, chapter twenty of this code.

§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

(a) It is unlawful for any person, while engaged in the act of hunting, pursuing, taking or killing wild animals or wild birds, to carelessly or negligently shoot, wound or kill another person.

(b) Anyone who negligently shoots, wounds or injures another person while hunting, not resulting in serious bodily injury or death, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than six months, or both fined and confined.

(c) Anyone who negligently shoots and injures another person while hunting, resulting in serious bodily injury or death, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in jail for not more than one year, or both fined and confined.

(d) For purposes of this section, serious bodily injury means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(e) (1) Any person who, while hunting, discharges a firearm or arrow and knows or has reason to know that the discharge has caused bodily harm to another person shall:

(A) Immediately investigate the extent of the person's injuries; and

(B) Render immediate reasonable assistance to the injured person.

(2) As used in this subsection, "reasonable assistance" means aid appropriate to the circumstances, including by not limited to obtaining or attempting to obtain assistance from a natural resources police officer, law-enforcement officer, 911 dispatchers, emergency medical providers and medical personnel.

(f) Any person who fails to render aid and assistance to an injured person as required by subsection (e), to an injured party who has not sustained a serious bodily injury is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 and confined in jail for not more than one year, or both fined and confined.

(g) Any person who fails to render aid as required by subsection (e) to an injured party who has sustained a serious bodily injury or dies as a result of their injuries is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(h) Any person found guilty of committing a misdemeanor under this section shall have their hunting and fishing licenses suspended for a period of five years from the date of conviction or the date of release from confinement, whichever is later.

(i) Any person found guilty of committing a felony offense under this section shall have their hunting and fishing licenses suspended for a period of ten years from the date of conviction or the date of release from incarceration, whichever is later.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.
§20-7-1a. Natural resources police officer salary increase based on length of service.
§20-7-1b. Designation of certain federal law-enforcement officers as special natural resources police officers.
§20-7-1c. Natural resources police officer, ranks, salary schedule, base pay, exceptions.
§20-7-1d. Awarding service revolver upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.
§20-7-1e. Natural resources police officer performing duties for private persons; penalty; providing extraordinary law enforcement or security services by contract.
§20-7-1f. Awarding service revolver to special natural resources police officers upon retirement; furnishing uniform for burial.
§20-7-2. Qualifications of natural resources police officers; right of retired officer to receive complete standard uniform; right of retired officer to acquire uniform; and right of retired officer to acquire badge.
§20-7-3. Powers and duties of law officers.
§20-7-4. Powers and duties of natural resources police officers.
§20-7-12b. Boating safety education certificate.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

(a) The division's law-enforcement policies, practices and programs are under the immediate supervision and direction of the division law-enforcement officer selected by the director and designated as chief natural resources police officer as provided in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural resources police officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive natural resources program. All division personnel detailed and assigned to law-enforcement duties and services under this section shall be known and designated as natural resources police officers and are under the immediate supervision and direction of the chief natural resources police officer. All natural resources police officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by division law-enforcement needs.

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resources police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and

administered by the chief natural resources police officer, when the action is considered necessary because of law-enforcement needs. The powers and duties of a special natural resources police officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person appointed as a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

(e) The chief natural resources police officer, acting under supervision of the director, is also authorized to appoint as special natural resources police officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief natural resources police officer. The jurisdiction of forest fire control personnel appointed as special natural resources police officers is limited to the enforcement of the provisions of article three of this chapter.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the State of West

Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police officers shall receive, in addition to their base pay salary, a minimum monthly subsistence allowance for their required telephone service, dry cleaning or required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of $130 each month. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term "conservation officer," or its plural, means "natural resources police officer," or its plural, respectively.

(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision six, subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to pensions of natural resources police officers paid through the Public Employees Retirement System.

§20-7-1a. Natural resources police officer salary increase based on length of service.

(a) Effective July 1, 2002, each natural resources police officer shall receive and be entitled to an increase in salary based on length of service, including that heretofore and hereafter served as a natural resources police officer as follows: For five years of service with the division, a natural resources police officer shall receive a salary increase of $600 per year payable during his or her next three years of

service and a like increase at three-year intervals thereafter, with these increases to be cumulative. A salary increase shall be based upon years of service as of July 1 of each year and may not be recalculated until July 1 of the following year.

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid salaries as the same length of service will entitle them to receive under the provisions hereof.

(b) This section does not apply to special or emergency natural resources police officers appointed under the authority of section one of this article.

§20-7-1b. Designation of certain federal law-enforcement officers as special natural resources police officers.

The Legislature finds that it is in the mutual interest of the department and certain land management agencies of the United States to cooperate in the enforcement of state statutes and regulations within and adjacent to units of the National Park System, National Forests and U.S. Army Corps of Engineers projects located within the State of West Virginia.

Accordingly, the director of the department of natural resources may enter into a written agreement with a federal agency providing for the appointment of employees of the federal agency as special natural resources police officers and setting forth the terms and conditions within which the federal employees may exercise the powers and duties of special natural resources police officers. The terms and conditions in the agreement shall grant a special natural resources police officer appointed pursuant to the agreement the same powers and duties as prescribed for a full-time salaried natural resources police officer of the department,

but shall limit a special natural resources police officer in the exercise of his or her powers and duties to areas within the boundaries of the federal units to which the officer is assigned in his or her federal employment and to situations outside the boundaries of the federal units where the exercise is for the mutual aid of natural resources police officers as set forth in the agreement.

Any federal employee whose duties involve the enforcement of the criminal laws of the United States and who possesses a valid law-enforcement certification issued by a federal land management agency which certifies the meeting of requirements at least equivalent to the law-enforcement officer training requirements promulgated pursuant to article twenty-nine, chapter thirty of this code, may be certified under the provisions of said article twenty-nine and appointed as a special natural resources police officer under the provisions of this section. Any special natural resources police officer so appointed may not receive compensation or benefits from the state or any political subdivisions thereof for the performance of his or her duties as a special natural resources police officer.

§20-7-1c. Natural resources police officer, ranks, salary schedule, base pay, exceptions.

(a) Notwithstanding any provision of this code to the contrary, the ranks within the law-enforcement section of the Division of Natural Resources are colonel, lieutenant colonel, major, captain, lieutenant, sergeant, corporal, natural resources police officer first class, senior natural resources police officer, natural resources police officer and natural resources police officer-in-training. Each officer while in uniform shall wear the insignia of rank as provided by the chief natural resources police officer.

10 (b) Beginning on July 1, 2002, and continuing thereafter,
11 natural resources police officers shall be paid the minimum
12 annual salaries based on the following schedule:

13 ANNUAL SALARY SCHEDULE (BASE PAY)
14 SUPERVISORY AND NONSUPERVISORY RANKS

15 Natural Resources
16 Police Officer In Training
17 (first year until end of probation) $26,337
18 Natural Resources Police Officer
19 (second year) $29,768
20 Natural Resources Police Officer (third year) $30,140
21 Senior Natural Resources Police Officer
22 (fourth and fifth year) $30,440
23 Senior Natural Resources
24 Police Officer First Class (after fifth year) $32,528
25 Senior Natural Resources
26 Police Officer (after tenth year) $33,104
27 Senior Natural Resources
28 Police Officer (after fifteenth year) $33,528
29 Corporal (after sixteenth year) $36,704
30 Sergeant $40,880
31 First Sergeant $42,968
32 Lieutenant $47,144
33 Captain $49,232
34 Major $51,320
35 Lieutenant Colonel $53,408
36 Colonel . . . . . .

37 Natural resources police officers in service at the time the
38 amendment to this section becomes effective shall be given
39 credit for prior service and shall be paid salaries as the same
40 length of service will entitle them to receive under the
41 provisions of this section.

(c) This section does not apply to special or emergency natural resources police officers appointed under the authority of section one of this article.

(d) Nothing in this section prohibits other pay increases as provided under section two, article five, chapter five of this code: *Provided,* That any across-the-board pay increase granted by the Legislature or the Governor will be added to, and reflected in, the minimum salaries set forth in this section; and that any merit increases granted to an officer over and above the annual salary schedule listed in subsection (b) of this section are retained by an officer when he or she advances from one rank to another.

§20-7-1d. Awarding service revolver upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.

(a) Upon the retirement of any full-time salaried natural resources police officer, the chief natural resources police officer shall award to the retiring natural resources police officer his or her service revolver, without charge, upon determining:

(1) That the natural resources police officer is retiring honorably with at least twenty-five years of recognized law-enforcement service as determined by the chief natural resources police officer; or

(2) That the natural resources police officer is retiring with less than twenty-five years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of subsection (a) of this section, the chief natural resources police officer may not award a service revolver to any natural resources police

officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer, constitutes a danger to any person or the community.

(c) The disposal of law-enforcement service weapons, when replaced due to routine wear, does not fall under the jurisdiction of the agency for surplus property, within the Purchasing Division of the Department of Administration. The chief natural resources police officer may offer these surplus weapons for sale to any active or retired Division of Natural Resources law-enforcement officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.

(d) Upon the death of any current or honorably retired natural resources police officer, the chief natural resources police officer shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.

§20-7-1e. Natural resources police officer performing duties for private persons; penalty; providing extraordinary law enforcement or security services by contract.

(a) Any natural resources police officer who hires himself or herself to any person, firm or corporation to guard private property, or who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the regulations of the chief natural resources police officer and the provisions of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for not more than four months, or both fined and confined.

12 (b) Notwithstanding any other provision of this section to
13 the contrary, the chief natural resources police officer may
14 contract with the public, military or private entities to provide
15 extraordinary law enforcement or security services by the
16 Division of Natural Resources when it is determined by the
17 chief natural resources police officer to be in the public
18 interest. The chief natural resources police officer may assign
19 personnel, equipment or facilities, and the division shall be
20 reimbursed for the wages, overtime wages, benefits and costs
21 of providing the contract services as negotiated between the
22 parties. The compensation paid to natural resources police
23 officers by virtue of contracts provided in this section shall be
24 paid from a special account and are excluded from any
25 formulation used to calculate an employee's benefits. All
26 requests for obtaining extraordinary law enforcement or
27 security services shall be made to the chief natural resources
28 police officer in writing and shall explain the funding source
29 and the authority for making the request. No officer of the
30 division is required to accept any assignment made pursuant
31 to this subsection. Every officer assigned to duty hereunder
32 shall be paid according to the hours and overtime hours
33 actually worked notwithstanding that officer's status as
34 exempt personnel under the "Federal Labor Standards Act" or
35 applicable state statutes. Every contract entered into under
36 this subsection shall contain the provision that in the event of
37 public disaster or emergency where the reassignment to
38 official duty of the officer is required, neither the division nor
39 any of its officers or other personnel are liable for any
40 damages incurred as the result of the reassignment. Further,
41 any entity contracting with the Division of Natural Resources
42 under this section shall also agree as part of that contract to
43 hold harmless and indemnify the state, Division of Natural
44 Resources and its personnel from any liability arising out of
45 employment under that contract.

46 The director is authorized to propose legislative rules,
47 subject to approval by the Legislature, in accordance with

chapter twenty-nine-a of this code relating to the implementation of contracts entered into pursuant to this subsection: *Provided,* That the rules expressly prohibit private employment of officers in circumstances involving labor disputes.

§20-7-1f. Awarding service revolver to special natural resources police officers upon retirement; furnishing uniform for burial.

(a) Upon the retirement of any special natural resources police officer selected and appointed pursuant to section one of this article, the chief of the officer's section shall award to the retiring special natural resources police officer his or her service revolver, without charge, upon determining:

(1) That the special natural resources police officer is retiring honorably with at least twenty-five years of recognized special law-enforcement service as determined by the chief natural resources police officer; or

(2) That the special natural resources police officer is retiring with less than twenty-five years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of subsection (a) of this section, the section chief may not award a service revolver to any special natural resources police officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer constitutes a danger to any person or the community.

(c) Upon the death of any current or honorably retired special natural resources police officer, the respective chief shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.

§20-7-2. Qualifications of natural resources police officers; right of retired officer to receive complete standard uniform; right of retired officer to acquire uniform; and right of retired officer to acquire badge.

1 In addition to civil service qualifications and
2 requirements, persons selected as natural resources police
3 officers shall have reached their eighteenth birthday at the
4 time of appointment, be in good physical condition and of
5 good moral character, temperate in habits and may not have
6 been convicted of a felony. Whenever possible and
7 practicable, preference in selection of natural resources police
8 officers shall be given honorably discharged United States
9 Military personnel. Each natural resources police officer,
10 before entering upon the discharge of his or her duties, shall
11 take and subscribe to the oath of office prescribed in article
12 IV, section 5 of the Constitution of West Virginia, which
13 executed oath shall be filed with the director.

14 The director shall prescribe the kind, style and material
15 of uniforms to be worn by natural resources police officers.
16 Uniforms and other equipment furnished to the natural
17 resources police officers are and remain the property of the
18 state, except as hereinafter provided in this section.

19 A natural resources police officer, upon honorable
20 retirement, is authorized to maintain at his or her own cost a
21 complete standard uniform from the law-enforcement agency
22 of which he or she was a member, and shall be issued an
23 identification card indicating his or her honorable retirement
24 from the law-enforcement agency. The uniform may be worn
25 by the officer in retirement only on the following occasions:
26 Police Officer's Memorial Day, Law Enforcement Appreciation
27 Day, at the funeral of a law-enforcement officer or during
28 any other police ceremony. The honorably retired officer is
29 authorized to acquire a badge of the law-enforcement agency

30 from which he or she is retired with the word "retired" placed
31 on it.

§20-7-3. Powers and duties of other law officers.

1 The sheriffs and constables of the several counties of the
2 state, police officers of any city and members of the State
3 Police are vested, within their respective jurisdictions, with
4 all of the powers and authority of natural resources police
5 officers without requirement of any additional oath or bond.
6 Immediately upon making any arrest or executing any
7 process under provisions of this chapter, each officer shall
8 report thereon to the director.

§20-7-4. Powers and duties of natural resources police officers.

1 (a) Natural resources police officers and other persons
2 authorized to enforce the provisions of this chapter are under
3 the supervision and direction of the director in the
4 performance of their duties.

5 (b) Natural resources police officers have statewide
6 jurisdiction and have authority to:

7 (1) Arrest on sight, without warrant or other court
8 process, any person or persons committing a criminal offense
9 in violation of the laws of this state, in the presence of the
10 officer, but no arrest may be made where any form of
11 administrative procedure is prescribed by this chapter for the
12 enforcement of the provisions of this chapter;

13 (2) Carry arms and weapons as may be prescribed by the
14 director in the course and performance of their duties, but no
15 license or other authorization is required for this privilege;

16 (3) Search and examine, in the manner provided by law,
17 any boat, vehicle, automobile, conveyance, express or

railroad car, fish box, fish bucket or creel, game bag or game coat or other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of the provisions of this chapter;

(4) Execute and serve a search warrant, notice or other process of law issued under the authority of this chapter or other law relating to wildlife, forests, and all other natural resources, by a magistrate or court having jurisdiction in the same manner, with the same authority and with the same legal effect as a sheriff;

(5) Require the operator of any motor vehicle or other conveyance on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing the natural resources police officers to conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in executing warrants, notices or processes, in the same manner as sheriffs;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties;

(8) Arrest on sight, without warrant or other court process, subject to the limitations set forth in subdivision (1) of this section, any person or persons committing a criminal offense in violation of any law of this state in the presence of the officer on any state-owned lands and waters and lands and waters under lease by the Division of Natural Resources and all national forest lands, waters and parks and U.S. Corps of Army Engineers' properties within the boundaries of the State of West Virginia and, in addition to the authority conferred in other subdivisions of this section, execute all

arrest warrants on these state and national lands, waters and parks and U.S. Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-two of this code;

(9) Arrest any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage or carry away, or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant. Any person convicted of cutting, damaging or carrying away or causing to be cut, damaged or carried away any timber, trees, logs, posts, fruits, nuts, growing plants or products of growing plants is liable to the owner in the amount of three times the value of the timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant, in addition to and notwithstanding any other penalties by law provided by section thirteen, article three, chapter sixty-one of this code;

(10) Make a complaint in writing before any court or officer having jurisdiction, and procure and execute the warrant, when the officer knows or has reason to believe that a person has violated a law of this state. The actions of the natural resources police officer have the same force and effect as if made by a sheriff;

(11) Serve and execute warrants for the arrest of any person and warrants for the search of any premises, buildings, properties or conveyances issued by a properly constituted authority in the same manner, with the same authority, and with the same legal effect, as a sheriff; and

(12) Do all things necessary to carry into effect the provisions of this chapter.

§20-7-12b. Boating safety education certificate.

(a) Except as otherwise provided in subsection (c) of this section, beginning on January 1, 2001, no person born on or after December 31, 1986, may operate a motorboat or personal watercraft on any waters of this state without first having obtained a certificate of boating safety education from this or any other state, which certificate was obtained by satisfactorily completing a course of instruction in boating safety education administered by the United States coast guard auxiliary; the United States power squadron; the West Virginia Division of Natural Resources; any person certified to teach the course administered by West Virginia natural resources boating safety education section personnel; or any person authorized to teach the course prescribed by the national association of state boating law administrators in this or any other state.

(b) Any person who is subject to subdivision (a) of this section shall possess the certificate of boating safety education when operating a motorboat or personal watercraft on the waters of this state and shall show the certificate on demand of any West Virginia natural resources police officers or other law-enforcement officer authorized to enforce the provisions of this chapter.

(c) The following persons are exempt from the requirements of subsection (a) of this section:

(1) A person who is a nonresident of this state and who is visiting the state for sixty days or less in a motorboat or personal watercraft from another state if that person:

(A) Is fifteen years of age or older; and

(B) Has been issued a boating safety education certificate by his or her state of residence in accordance with the criteria recommended by the national association of state boating law administration.

(2) A person who is visiting the state for ninety days or less in a motorboat or personal watercraft from a country other than the United States;

(3) A person who is operating a motorboat or personal watercraft in connection with commercial purposes; and

(4) A person who is operating a motorboat or personal watercraft which was purchased by the person within the previous forty-five-day period and who has not been previously charged with a violation of any provision of this chapter involving the use or registration of a motorboat or personal watercraft.

(d) The division shall issue a certificate of boating safety education to a person who:

(1) Passes any course prescribed in subsection (a) of this section; or

(2) Passes a boating safety equivalency examination administered by persons authorized to administer a boating safety education course as outlined in subsection (a) of this section. Upon request, the division shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(e) No person who owns a motorboat or personal watercraft or who has charge over a motorboat or personal watercraft may authorize or knowingly permit it to be operated in violation of subsection (a) of this section.

(f) The provisions of subsection (a) of this section may only be enforced as a secondary action when the officer detains an operator of a motorboat or personal watercraft upon probable cause of a violation of another provision of this code or rules adopted in accordance with the code. A

63 person may not be taken immediately to a court or detention
64 facility solely for a violation of subsection (a) of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) *Imposition.* -- A recycling assessment fee is hereby
2 levied and imposed upon the disposal of solid waste at all solid
3 waste disposal facilities in this state, to be collected at the rate of
4 $2 per ton or part of a ton of solid waste. The fee imposed by
5 this section is in addition to all other fees levied by law.

6 (b) *Collection, return, payment and records.* -- The
7 person disposing of solid waste at the solid waste disposal
8 facility shall pay the fee imposed by this section, whether or
9 not that person owns the solid waste, and the fee shall be
10 collected by the operator of the solid waste facility who shall
11 remit it to the Tax Commissioner:

12 (1) The fee imposed by this section accrues at the time the
13 solid waste is delivered to the solid waste disposal facility;

14 (2) The operator shall remit the fee imposed by this
15 section to the Tax Commissioner on or before the fifteenth
16 day of the month next succeeding the month in which the fee
17 accrued. Upon remittance of the fee, the operator shall file
18 returns on forms and in the manner as prescribed by the Tax
19 Commissioner;

20 (3) The operator shall account to the state for all fees
21 collected under this section and shall hold them in trust for
22 the state until they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount that he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent; and

57 (8) Each person disposing of solid waste at a solid waste
58 disposal facility and each person required to collect the fee
59 imposed by this section shall keep complete and accurate
60 records in the form required by the Tax Commissioner in
61 accordance with the rules of the Tax Commissioner.

62 (c) *Regulated motor carriers.* -- The fee imposed by this
63 section is a necessary and reasonable cost for motor carriers of
64 solid waste subject to the jurisdiction of the Public Service
65 Commission under chapter twenty-four-a of this code.
66 Notwithstanding any provision of law to the contrary, upon the
67 filing of a petition by an affected motor carrier, the Public
68 Service Commission shall, within fourteen days, reflect the cost
69 of the fee in the motor carrier's rates for solid waste removal
70 service. In calculating the amount of the fee to the motor carrier,
71 the Commission shall use the national average of pounds of
72 waste generated per person per day as determined by the United
73 States Environmental Protection Agency.

74 (d) *Definition.* -- For purposes of this section, "solid
75 waste disposal facility" means any approved solid waste
76 facility or open dump in this state and includes a transfer
77 station when the solid waste collected at the transfer station
78 is not finally disposed of at a solid waste facility within this
79 state that collects the fee imposed by this section.

80 Nothing in this section authorizes in any way the creation
81 or operation of or contribution to an open dump.

82 (e) *Exemptions.* -- The following transactions are exempt
83 from the fee imposed by this section:

84 (1) Disposal of solid waste at a solid waste facility by the
85 person who owns, operates or leases the solid waste disposal
86 facility if it is used exclusively to dispose of waste originally
87 produced by that person in his or her regular business or
88 personal activities or by persons utilizing the facility on a
89 cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the Secretary by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) *Procedure and administration.* -- Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties.* -- Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if the sections were the only fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* -- The proceeds of the fee collected pursuant to this section shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account designated as the Recycling Assistance Fund which is hereby continued and transferred to the Department of Environmental Protection. The secretary shall allocate the proceeds of the fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The Secretary shall promulgate rules, in accordance

with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters considered appropriate: *Provided,* That persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, are not eligible to receive grants under the provisions of this article;

(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried natural resources police officers;

(3) Twelve and one-half percent of the total proceeds shall be directly allocated to the solid waste planning fund;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the Solid Waste Reclamation and Environmental Response Fund, established pursuant to section eleven, article fifteen, chapter twenty-two of this code, to be expended by the Department of Environmental Protection to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the Hazardous Waste Emergency Response Fund established in article nineteen of this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

2A. State Aeronautics Commission.
3. Fire Prevention and Control Act.

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who operates an aircraft in this state is
2 considered to have given his or her consent by the operation
3 thereof to a preliminary breath analysis and a secondary
4 chemical test of either his or her blood, breath or urine for the
5 purposes of determining the alcoholic content of his or her
6 blood. A preliminary breath analysis may be administered in
7 accordance with the provisions of section eleven-b of this
8 article whenever a law-enforcement officer has reasonable
9 cause to believe a person to have committed an offense
10 prohibited by section eleven of this article. A secondary test
11 of blood, breath or urine shall be incidental to a lawful arrest
12 and shall be administered at the direction of the arresting
13 law-enforcement officer having reasonable grounds to
14 believe the person to have committed an offense prohibited
15 by said section. The law-enforcement agency by which the
16 law-enforcement officer is employed shall designate which
17 one of the aforesaid secondary tests shall be administered:
18 *Provided,* That if the test so designated is a blood test and the
19 person so arrested refuses to submit to the blood test, then the
20 law-enforcement officer making the arrest shall designate in
21 lieu thereof either a breath or urine test to be administered.

22 For the purpose of this article, the term "law-enforcement
23 officer" means and is limited to: (1) Any member of the State
24 Police; (2) any sheriff and any deputy sheriff of any county;
25 (3) any member of a police department in any municipality
26 as defined in section two, article one, chapter eight of this
27 code; and (4) any natural resources police officer of the
28 Division of Natural Resources. If any municipality or the
29 Division of Natural Resources does not have available to its
30 law-enforcement officers the testing equipment or facilities

31 necessary to conduct any secondary test which a
32 law-enforcement officer may administer under this article,
33 any member of the West Virginia State Police, the sheriff of
34 the county wherein the arrest is made or any deputy of the
35 sheriff or any municipal law-enforcement officer of another
36 municipality within the county wherein the arrest is made
37 may, upon the request of the arresting law-enforcement
38 officer and in his or her presence, conduct a secondary test
39 and the results of the test may be used in evidence to the
40 same extent and in the same manner as if the test had been
41 conducted by the arresting law-enforcement officer. Only the
42 person actually administering or conducting the test is
43 competent to testify as to the results and the veracity of the
44 test.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12. Powers and duties of State Fire Marshal.

1 (a) *Enforcement of laws.* -- The State Fire Marshal and
2 any other person authorized to enforce the provisions of this
3 article under the supervision and direction of the State Fire
4 Marshal has the authority to enforce all laws of the state
5 having to do with:

6 (1) Prevention of fire;

7 (2) The storage, sale and use of any explosive,
8 combustible or other dangerous article or articles in solid,
9 flammable liquid or gas form;

10 (3) The installation and maintenance of equipment of all
11 sorts intended to extinguish, detect and control fires;

12 (4) The means and adequacy of exit, in case of fire, from
13 buildings and all other places in which persons work, live or
14 congregate, from time to time, for any purpose, except

buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the State Fire Code.

(b) *Assistance upon request.* -- Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, natural resources police officer or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided,* That the State Fire Marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* -- The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article.

(d) *Inspections generally.* -- The State Fire Marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

(e) *Right of entry*. -- The State Fire Marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to subdivision (1), subsection (a), section twelve-b of this article or of article three-b of this chapter.

(f) *Investigations*. -- The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the state Fire Marshal shall obtain a proper search warrant: *Provided,* That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) *Testimony*. -- The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or

82 testimony reduced to writing; and shall transmit a copy of the
83 statements or testimony so taken to the prosecuting attorney
84 for the county wherein the fire or explosion or attempt to
85 cause a fire or explosion occurred. Notwithstanding the
86 above, no person may be compelled to testify or give any
87 statement under this subsection.

88 (h) *Arrests; warrants*. -- The State Fire Marshal, any
89 full-time deputy fire marshal or any full-time assistant fire
90 marshal employed by the State Fire Marshal pursuant to
91 section eleven of this article is hereby authorized and
92 empowered and any person deputized pursuant to subsection
93 (j) of this section may be authorized and empowered by the
94 State Fire Marshal:

95 (1) To arrest any person anywhere within the confines of
96 the State of West Virginia, or have him or her arrested, for
97 any violation of the arson-related offenses of article three,
98 chapter sixty-one of this code or of the explosives-related
99 offenses of article three-e of said chapter: *Provided,* That any
100 and all persons so arrested shall be forthwith brought before
101 the magistrate or circuit court.

102 (2) To make complaint in writing before any court or
103 officer having jurisdiction and obtain, serve and execute an
104 arrest warrant when knowing or having reason to believe that
105 anyone has committed an offense under any provision of this
106 article, of the arson-related offenses of article three, chapter
107 sixty-one of this code or of the explosives-related offenses of
108 article three-e of said chapter. Proper return shall be made on
109 all arrest warrants before the tribunal having jurisdiction over
110 the violation.

111 (3) To make complaint in writing before any court or
112 officer having jurisdiction and obtain, serve and execute a
113 warrant for the search of any premises that may possess
114 evidence or unlawful contraband relating to violations of this
115 article, of the arson-related offenses of article three, chapter

sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(i) *Witnesses and oaths.* -- The State Fire Marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding aforesaid is considered perjury and is punishable as perjury.

(j) *Deputizing members of fire departments in this state.* -- The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and the investigations as may be directed by the State Fire Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make effective the provisions of this article and any and all rules promulgated by the State Fire Commission under authority of this article: *Provided,* That in the case of a volunteer fire department, only the chief thereof or his or her single designated assistant may be so deputized.

(k) *Written report of examinations.* -- The State Fire Marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him or her regarding any fire happening within their respective jurisdictions.

152 (l) *Report of losses by insurance companies.* -- It is the
153 duty of each fire insurance company or association doing
154 business in this state, within ten days after the adjustment of
155 any loss sustained by it that exceeds $1,500, to report to the
156 State Fire Marshal information regarding the amount of
157 insurance, the value of the property insured and the amount
158 of claim as adjusted. This report is in addition to any
159 information required by the State Insurance Commissioner.
160 Upon the request of the owner or insurer of any property
161 destroyed or injured by fire or explosion, or in which an
162 attempt to cause a fire or explosion may have occurred, the
163 State Fire Marshal shall report in writing to the owner or
164 insurer the result of the examination regarding the property.

165 (m) *Issuance of permits and licenses.* -- the State Fire
166 Marshal is authorized to issue permits, documents and
167 licenses in accordance with the provisions of this article or of
168 article three-b of this chapter. The State Fire Marshal may
169 require any person who applies for a permit to use
170 explosives, other than an applicant for a license to be a
171 pyrotechnic operator under section twenty-four of this article,
172 to be fingerprinted and to authorize the State Fire Marshal to
173 conduct a criminal records check through the criminal
174 identification bureau of the West Virginia State Police and a
175 national criminal history check through the Federal Bureau
176 of Investigation. The results of any criminal records or
177 criminal history check shall be sent to the State Fire Marshal.

178 (n) *Issuance of citations for fire and life safety violations.*
179 -- the State Fire Marshal, any deputy fire marshal and any
180 assistant fire marshal employed pursuant to section eleven of
181 this article are hereby authorized, and any person deputized
182 pursuant to subsection (j) of this section may be authorized
183 by the State Fire Marshal to issue citations, in his or her
184 jurisdiction, for fire and life safety violations of the State Fire
185 Code and as provided for by the rules promulgated by the
186 State Fire Commission in accordance with article three,
187 chapter twenty-nine-a of this code: *Provided,* That a

188 summary report of all citations issued pursuant to this section
189 by persons deputized under subsection (j) of this section shall
190 be forwarded monthly to the State Fire Marshal in the form
191 and containing information as he or she may by rule require,
192 including the violation for which the citation was issued, the
193 date of issuance, the name of the person issuing the citation
194 and the person to whom the citation was issued. The State
195 Fire Marshal may at any time revoke the authorization of a
196 person deputized pursuant to subsection (j) of this section to
197 issue citations, if in the opinion of the State Fire Marshal, the
198 exercise of authority by the person is inappropriate.

199 Violations for which citations may be issued include, but
200 are not limited to:

201 (1) Overcrowding places of public assembly;

202 (2) Locked or blocked exits in public areas;

203 (3) Failure to abate a fire hazard;

204 (4) Blocking of fire lanes or fire department connections;
205 and

206 (5) Tampering with, or rendering inoperable except during
207 necessary maintenance or repairs, on-premise firefighting
208 equipment, fire detection equipment and fire alarm systems.

209 (o) *Required training; liability coverage.* -- No person
210 deputized pursuant to subsection (j) of this section may be
211 authorized to issue a citation unless that person has
212 satisfactorily completed a law-enforcement officer training
213 course designed specifically for fire marshals. The course
214 shall be approved by the Law-enforcement Training
215 Subcommittee of the Governor's Committee on Criminal
216 Justice and Highway Safety and the State Fire Commission.
217 In addition, no person deputized pursuant to subsection (j) of
218 this section may be authorized to issue a citation until
219 evidence of liability coverage of the person has been

provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) *Penalties for violations.* -- Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in jail not more than ninety days, or both fined and confined.

Each and every day during which any violation of the provisions of this article continues after knowledge or official notice that same is illegal is a separate offense.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

"Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

"Chief executive" means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

"County" means the fifty-five major political subdivisions of the state;

"Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

"Governor's Committee on Crime, Delinquency and Correction" or "Governor's committee" means the Governor's Committee on Crime, Delinquency and Correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency: *Provided,* That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;

"Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

"Subcommittee" or "law-enforcement training subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency and Correction created by section two of this article; and

"West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided,* That neither the Hatfield-McCoy Regional Recreation Authority, the Public Service Commission nor any state institution of higher education is a law-enforcement agency.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT AGENCIES.

§36-8A-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

(a) "Chief executive" means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency.

(b) "Item" means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

11 (c) "Law-enforcement agency" means any duly
12 authorized state, county or municipal organization of the
13 State of West Virginia employing one or more persons whose
14 responsibility is the enforcement of laws of the state or any
15 county or municipality thereof: *Provided,* That neither the
16 Hatfield-McCoy Regional Recreation Authority nor any state
17 institution of higher education is a law-enforcement agency.

18 (d) "Nonprofit organization" means: (i) Any nonprofit
19 charitable organization; or (ii) any agency of the State of
20 West Virginia the purpose of which is to provide health,
21 recreational or educational services to citizens of the State of
22 West Virginia.

23 (e) "Stolen property" means any tangible personal property,
24 including cash and coins, which is confiscated by or otherwise
25 comes into the custody of a law-enforcement agency during the
26 course of a criminal investigation or the performance of any
27 other authorized law-enforcement activity, whether or not the
28 property was or can be proven to have been stolen.

29 (f) "Treasurer" means the State Treasurer or his or her
30 authorized designee for purposes of the administration of this
31 article.

32 (g) "Unclaimed stolen property" is stolen property:

33 (1) Which has been held by a law-enforcement agency
34 for at least six months, during which time the rightful owner
35 has not claimed it;

36 (2) For which the chief executive determines that there is
37 no reasonable likelihood of its being returned to its rightful
38 owner; and

39 (3) Which the chief executive determines to have no
40 evidentiary value.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2010

CHAPTER 1

(H.B. 202 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending June 30, 2011.

Be it enacted by the Legislature of West Virginia:

That Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the budget bill, be supplemented and amended by creating Title II, section 8a to read as follows:

Sec. 8a. Appropriations from general revenue surplus accrued.

The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2011 out of surplus funds only, accrued from the fiscal year ending June 30, 2010, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of July 31, 2010, from the fiscal year ending June 30, 2010.

In the event that surplus revenues available on July 31, 2010, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; and next, to provide the funds necessary for the second appropriation of this section.

352a—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2011 Org 1600

1 Special Election - Surplus ..... 233 $ 1,500,000

352b—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

1 Elementary/Middle Alternative
2 Schools - Surplus 271 ..... $ 1,000,000

The purpose of this supplementary appropriation bill is to supplement and create a new section that contains new items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2011.

CHAPTER 2

(H. B. 214 - By Delegates White, M. Poling, Kominar, Spencer, Guthrie, Klempa, Mahan, Phillips, Doyle, Carmichael and Ashley)

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

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 Agriculture, fund 0131, fiscal year 2011, organization 1400, to the Attorney General, fund 0150, fiscal year 2011, organization 1500, to the Department of Administration - West Virginia Public Employees Grievance Board, fund 0220, fiscal year 2011, organization 0219, and to the Department of Commerce - Division of Miners' Health, Safety and Training, fund 0277, fiscal year 2011, organization 0314, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated May 13, 2010, setting forth therein the cash balance as of July 1, 2009, and further included the estimate of revenues for fiscal year 2010, less net appropriation balances forwarded and regular appropriations for the fiscal year 2010, and an estimate of revenues for the fiscal year 2011, less regular appropriations for the fiscal year 2011; 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 June 30, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 0131, fiscal year 2011, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10–Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2011 Org 1400

		Activity	General Revenue Funds
14a	Capital Outlay and Maintenance	755	$ 75,000

And that the total appropriation for the fiscal year ending June 30, 2011, to fund 0150, fiscal year 2011, organization 1500, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2011 Org 1500

		Activity	General Revenue Funds
1	5a Criminal Convictions and Habeas		
2	5b Corpus Appeals	260	$ 822,413

3 And that the total appropriation for the fiscal year ending
4 June 30, 2011, to fund 0220, fiscal year 2011, organization
5 0219, be supplemented and amended by increasing an
6 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

24–West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2011 Org 0219

	Activity	General Revenue Funds
4 Unclassified	099	$ 75,000

2 And that the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 0277, fiscal year 2011, organization
4 0314, be supplemented and amended by adding a new item
5 of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

38–Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2011 Org 0314

		Activity	General Revenue Funds
1	4a Coal Dust and Rock Sampling	270	$ 411,200

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, decrease, increase and add items of
4 appropriations in the aforesaid accounts for the designated
5 spending units for expenditure during the fiscal year 2011.

CHAPTER 3

(H. B. 215 - By Delegates White, M. Poling, Kominar, Iaquinta, Marshall, Doyle, Phillips, Mahan, Klempa, Guthrie and Spencer)

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

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 June 30, 2011, to the Department of Education and the Arts - Office of the Secretary, fund 8841, fiscal year 2011, organization 0431, and to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2011, organization 0313, by supplementing and amending Chapter 8, Acts of the Legislature, Regular Session, 2010, known as the budget bill.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2011, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 8841, fiscal year 2011, organization 0431, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF EDUCATION AND THE ARTS

306-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2011 Org 0431

		Activity	Other Funds
1	1 Unclassified - Total	096	$ 650,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 8708, fiscal year 2011, organization
4 0313, be supplemented and amended by increasing an
5 existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

312-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2011 Org 0313

		Activity	Other Funds
1	1 Unclassified - Total	096	$17,399,000

CHAPTER 4

(H. B. 216 - By Delegates White, M. Poling, Kominar, Spencer, Guthrie, Klempa, Mahan, Phillips, Anderson, Border and Walters)

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT supplementing and amending an item of the existing appropriation from the State Fund, General Revenue to the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2011, organization 0100.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2011, to fund 0105, fiscal year 2011, organization 0100 be supplemented and amended to read as follows:

TITLE II - APPROPRIATIONS.

Sec. 1. Appropriations from General Revenue.

EXECUTIVE

7 -Governor's Office —
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2011 Org 0100

Any unexpended balances remaining in the appropriation for Business and Economic Development Stimulus - Surplus (fund 0105, activity 084), Civil Contingent Fund - Total (fund 0105, activity 114), May 2009 Flood Recovery - Surplus (fund 0105, activity 236), Civil Contingent Fund - Total - Surplus (fund 0105, activity 238), Civil Contingent Fund - Surplus (fund 0105, activity 263), Business and Economic Development Stimulus (fund 0105, activity 586), and Civil Contingent Fund (fund 0105, activity 614) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

From this appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia's contribution to the interstate oil compact commission.

From this appropriation an amount not more than $1,500,000 shall be expended for the purpose of funding the expenses associated with the special elections pursuant to Enrolled Committee Substitute for House Bill Number 201, Second Extraordinary Session, 2010.

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

The purpose of this supplemental appropriation bill is to supplement and amend an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending June 30, 2011.

CHAPTER 5

(H. B. 212 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend and reenact §51-2A-16 of the Code of West Virginia, 1931, as amended, relating to family court appellate procedures; extending the sunset provisions regarding appeal of family court decisions; requiring the Supreme Court of Appeals to report to the Joint Committee on Government and Finance before the 2011 Legislative session; setting forth issues to be discussed in the report; and applying amendments to section retroactively.

Be it enacted by the Legislature of West Virginia:

That §51-2A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

(a) The provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall expire and be of no force and effect after June 30, 2011, except as otherwise provided by subsection (b) of this section.

(b) Appeals that are pending before a circuit court or the Supreme Court of Appeals on June 30, 2011, but not decided before July 1, 2011 shall proceed to resolution in accordance with the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article, notwithstanding the provisions of subsection (a) of this section that provide for the expiration of those sections. The Supreme Court of Appeals shall, by rule, provide procedures for those appeals that are remanded but not concluded prior to July 1, 2011, in the event that the appeals process set forth in sections eleven, twelve, thirteen, fourteen and fifteen of this article is substantially altered as of July 1, 2011.

(c) Prior to the 2011 regular session of the Legislature and annually thereafter, the Supreme Court of Appeals shall provide a detailed report to the Joint Committee on Government and Finance the number of appeals from final orders of the family court filed in the various circuit courts and in the Supreme Court of Appeals, the number of pro se appeals filed, the subject matter of the appeals, the time periods in which appeals are concluded, the number of cases remanded upon appeal, recommendations and supporting data on the feasibility, need and effect of creating an intermediate appellate court or other system of appellate procedure for family court matters and such other detailed information so as to enable the Legislature to study the appellate procedures for family court matters and to consider the possible necessity and feasibility of creating an intermediate appellate court or other system of appellate procedure.

(d) The amendments to this section in the second extraordinary session of the Legislature in 2010 shall apply retroactively so that the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall be construed as if they did not expire after June 30, 2010.

CHAPTER 6

(S. B. 2010 - By Senators Tomblin, Mr. President, and Hall)
[By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to establishing pilot projects for alternative schools or other placements at elementary and middle school levels; requiring uniform definitions and standards for disruptive behavior and placement; and requiring reports.

Be it enacted by the Legislature of West Virginia:

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

1 (a) (1) The state board shall promulgate rules for the
2 accreditation, classification and standardization of all schools
3 in the state, except institutions of higher education, and shall
4 determine the minimum standards for the granting of
5 diplomas and certificates of proficiency by those schools.

The certificates of proficiency shall include specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate. The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and the recommended electives.

(2) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(3) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(b) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure. This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation. This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can

return to a regular classroom without engaging in further disruptive behavior.

(c) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(d) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, and the student graduates or passes the General Equivalency Development (GED) Tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall only be considered graduated to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States Department of Education; and

(3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this subsection, the student graduating or passing the General Educational Development (GED) Tests within five years shall be considered graduated.

(e) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the "Mountaineer Challenge Academy" which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in section twenty-four, article one-b, chapter fifteen of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall only be considered at full enrollment status for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this subdivision, the student

shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or attain the standards for graduation without duplication; and

(5) Consideration of eligibility to take the General Educational Development (GED) Tests by qualifying within the extraordinary circumstances provisions established by state board rule of a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility.

(f) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(g) The state board shall report to the Legislative Oversight Commission on Education Accountability on or before January 1 of each year on its efforts to cooperate with and support the Mountaineer Challenge Academy pursuant to this section and section twenty-four, article one-b, chapter fifteen of this code.

CHAPTER 7

(S. B. 2006 - By Senators Tomblin, Mr. President, and Hall)
[By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-38; and to amend said code by adding thereto a new article, designated §18-5C-1, §18-5C-2 and §18-5C-3, all relating to school teams and school committees; making legislative findings; requiring state board study; establishing purposes; requiring school application to create or augment collaborative teams by replacing certain school committees; providing that certain committees may not be reorganized; establishing certain authority not superceded; establishing contents of application; establishing local level approval process; providing for appeals of applications not approved by county; requiring state board approval; providing state board authority to waive certain state board rules; authorizing school to institute plan; and requiring state board legislative rules by certain date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-38; and that said code be amended by adding thereto a new article, designated §18-5C-1, §18-5C-2 and §18-5C-3, all to read as follows:

Article
2. State Board of Education.
5C. Committee Reorganization and Collaborative Team Waviers.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-38. School committees and school teams; legislative findings; state board study.

1 (a) *Legislative findings.* --

2 (1) The Legislature finds that the ultimate purpose of
3 public education is to create the best possible environment to
4 foster the teaching and learning process and that this purpose
5 is best accomplished when professional educators are
6 involved in direct interaction with students.

7 (2) The Legislature finds further that a number of school
8 committees and school teams have been created over the
9 years, both by state board rule and by state statute, designed
10 to meet the needs of a specific time or place and that these
11 committees and teams sometimes linger long after the
12 specific purpose or need that created them has passed. The
13 time and paperwork required to keep these committees and
14 teams functioning may create a burden for school personnel
15 in certain circumstances.

16 (3) The Legislature finds further that a thorough study is
17 needed to determine the feasibility, effectiveness and
18 necessity of each of these committees and teams in relation
19 to one another and to the needs of the students and schools
20 they are intended to serve.

21 (b) *State board study.* --

22 (1) Therefore, in view of the findings in subsection (a) of
23 this section, it is the intent of the Legislature that the state
24 board undertake a study of each school committee or school
25 team created by statute or by state board rule and determine

26 its organizational goals, effectiveness in meeting those goals,
27 and viability in relation to the demands of time and
28 paperwork it places on principals, teachers and other school
29 personnel. The study further shall consider alternative ways
30 that the goals of these teams and committees may be met to
31 involve stakeholders in the education process while reducing
32 the time demands and the paperwork burden they place on
33 school personnel.

34 (2) The state board shall report its study findings and
35 recommendations, together with draft legislation to
36 implement the recommendations, to the Legislative Oversight
37 Commission on Education Accountability and the Joint
38 Standing Committee on Education by November 1, 2010.

ARTICLE 5C. COMMITTEE REORGANIZATION AND COLLABORATIVE TEAM WAIVERS.

§18-5C-1. Purpose.
§18-5C-2. Application to create or augment existing collaborative teams; content and approval of application.
§18-5C-3. Rulemaking.

§18-5C-1. Purpose.

1 The purposes of this article are as follows:

2 (1) To facilitate and encourage teacher collaboration by
3 empowering schools to create alternative decision-making
4 processes that address school and classroom improvement.
5 The intent is to authorize reorganization or consolidation of
6 certain school committees and teams required by state board
7 rules, including the Strategic Planning Committee, the
8 Technology Team and the School Support Team; and

9 (2) To recognize that schools in this state differ greatly in
10 enrollment, grade configuration, demographics and student
11 needs and to provide teachers and principals with flexibility

12 to determine the types of committees and teams that are
13 needed to move the school forward.

§18-5C-2. Application to create or augment existing collaborative teams; contents and approval of application; grant of rule waivers for certain school-level committees required by state board rule.

1 (a) *Request for reorganization.* -- A school may submit
2 an application to the state board to create collaborative teams
3 that replace, or to augment its existing collaborative teams by
4 replacing, any or all of the following school-level committees
5 required by state board rule: The Strategic Planning
6 Committee, the Technology Team and the School Support
7 Team. Reorganization under this article may not replace the
8 Local School Improvement Council, the School Curriculum
9 Team, the Student Assistance Team or the Faculty Senate.
10 Reorganization under this article does not supercede the
11 authorization of the faculty senate with approval of the
12 principal to form a collaborative team as an alternative to the
13 school curriculum team pursuant to section six, article five-a
14 of this chapter.

15 (b) *Contents of application.* -- The application shall
16 include:

17 (1) A description of the collaborative teams, which shall
18 address all of the following:

19 (A) An emphasis on teacher collaboration and leadership;

20 (B) School and classroom effectiveness;

21 (C) Involvement and support of stakeholders; and

22 (D) A coherent learner-focused improvement plan;

23 (2) A list of the school-level committees that will be
24 replaced by the collaborative teams, an explanation of how
25 the existing membership of the committees replaced will
26 have representation in the reorganization, and how the roles,
27 responsibilities and tasks of the committees replaced will be
28 instituted in the reorganization;

29 (3) Evidence that the employees and stakeholders who
30 are involved in restructured collaborative teams have, or will
31 enter into, a process of professional learning that develops
32 the necessary knowledge and skills to enhance learner-
33 focused collaboration; and

34 (4) Evidence that employees and stakeholders have
35 researched viable improvement structures and processes and
36 have proposed an effective structure that addresses the
37 particular needs of the school, its students and employees.

38 (c) *Local-level approval.* -- Before submitting the waiver
39 application to the state board, a school shall take the
40 following steps:

41 (1) Present to the faculty senate a detailed explanation of
42 the proposed structure, roles and responsibilities addressed
43 by the reorganization plan;

44 (2) Provide for the chair of the faculty senate to conduct
45 a vote by secret ballot on the issues addressed in the
46 reorganization plan;

47 (3) Obtain a favorable vote for the reorganization plan
48 from at least eighty percent of the faculty senate members
49 present and voting after a quorum is established;

50 (4) Present to the local school improvement council a
51 detailed explanation of the proposed structure, roles and
52 responsibilities addressed by the reorganization plan;

(5) If the faculty senate vote is favorable and if it meets the percentage threshold established in subdivision (3) of this subsection, within one week of the vote taken by the faculty senate, provide for the chair of the council to conduct a vote on the issues addressed in the reorganization;

(6) Obtain a favorable vote for the reorganization plan from at least eighty percent of the local school improvement council members present and voting after a quorum is established; and

(7) Obtain approval for the reorganization plan from the county superintendent and the county board.

(d) *State board approval.* -- After meeting the requirements of subsection (c) of this section, the school shall submit its application to the state board. After review of the waiver application, the state board may approve the waiver of rules requiring the Strategic Planning Committee, the Technology Team or the School Support Team. After the state board has reviewed and approved a school's reorganization plan, the school may institute the plan as presented in its application.

§18-5C-3. Rulemaking.

By October 1, 2010, the state board shall promulgate a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The rule shall include a process for schools to appeal to the state board for approval of an application under this article for which approval has been denied by the county superintendent or county board, or both.

CHAPTER 8

(S. B. 2009 - By Senators Tomblin, Mr. President, and Hall)
[By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-3-12, requiring the state superintendent to establish a special community development school pilot program for implementation in a public school with significant enrollments of disadvantaged, minority and underachieving students for the purpose of developing and implementing strategies that could be replicated; and requiring reports to Legislative Oversight Commission on Education Accountability and state board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-3-12, to read as follows:

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-12. Special community development school pilot program.

1 (a) The state superintendent shall establish a special
2 community development school pilot program to be
3 implemented in one public school for the duration of five years.
4 The public school designated by the state superintendent for the

5 pilot shall have significant enrollments of disadvantaged,
6 minority and underachieving students. The designated public
7 school under the direction of the county board and county
8 superintendent shall work in collaboration with higher
9 education, community organizations and the state board to
10 develop and implement strategies that could be replicated in
11 other public schools with significant enrollments of
12 disadvantaged, minority and underachieving students to
13 improve academic achievement.

14 (b) Beginning in January, 2011, on or before the first day of
15 the regular session of the Legislature, and each year thereafter,
16 the state superintendent shall make a status report to the
17 Legislative Oversight Commission on Education Accountability
18 and to the state board. The report may include any
19 recommendations based on the progress of the demonstration
20 project that he or she considers either necessary for improving
21 the operations of the demonstration project or prudent for
22 improving student achievement in other public schools through
23 replication of successful demonstration school programs.

CHAPTER 9

(H. B. 211 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend and reenact §3-3B-3 of the Code of West Virginia, 1931, as amended, relating to the pilot program for military and overseas voters for the primary and general

elections to be held during the year 2010; and extending the application period for counties to apply with the Secretary of State's Office to participate in the pilot program for the general election.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3B. UNIFORMED SERVICES AND OVERSEAS VOTER PILOT PROGRAM.

§3-3B-3. Process for selection by Secretary of State.

1 (a) On or before the close of business on January 8, 2010,
2 for the 2010 primary and general election, and on or before
3 the close of business on July 30, 2010, for the 2010 general
4 election only, any county interested in participating in the
5 pilot program must submit a proposal to the Secretary of
6 State. The proposal shall include:

7 (1) The name of the vendor or vendors, if any, whose
8 voting system will be implemented for voting by uniformed
9 military and overseas citizen voters;

10 (2) The anticipated cost to the county of implementing
11 the proposal;

12 (3) The manner in which the voting system complies with
13 the provisions of section four of this article; and

14 (4) An option for the voter to choose not to vote using the
15 pilot voting system, but rather by mail, fax or e-mail at the
16 voter's discretion as provided in sections five and five-b,
17 article three, chapter three of this code.

18 (b) The Secretary of State shall evaluate each proposal
19 and shall approve those proposals which meet the criteria
20 described in section four of this article.

21 (c) On or before January 29, 2010, for the 2010 primary
22 and general election, and on or before August 13, 2010, for
23 the 2010 general election only, each county that has
24 submitted a proposal shall be notified by the Secretary of
25 State that the application has either been approved or denied.

26 (d) Any county that applied by January 8, 2010, and was
27 approved by the Secretary of State is considered approved for
28 program participation in both the 2010 primary election and
29 2010 general election.

30 (e) Following the primary election, the secretary shall
31 evaluate the functional effectiveness of pilot programs
32 conducted under this article and shall terminate any program
33 that fails to adequately and securely ensure that absent
34 uniformed services voters and overseas voters have their
35 absentee ballots cast and counted in the primary election.

36 (f) Ninety days following the 2010 primary election and
37 ninety days following the 2010 general election, the secretary
38 shall submit to the Legislature reports on the progress and
39 outcomes of any pilot program conducted under this article,
40 together with recommendations:

41 (1) For the conduct of additional pilot programs; and

42 (2) For such other legislation as the secretary determines
43 appropriate.

CHAPTER 10

(S. B. 2003 - By Senators Tomblin, Mr. President, and Hall)
[By Request of the Executive]

[Passed July 21, 2010; in effect from passage.]
[Approved by the Governor on July 26, 2010.]

AN ACT to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended, relating to investments by Marshall University and West Virginia University; and retroactively extending the authority for the investment of certain university funds by the nonprofit foundations of Marshall University and West Virginia University.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

1 (a) Notwithstanding any provision of this article to the
2 contrary, the governing boards of Marshall University and
3 West Virginia University each may invest certain funds with
4 its respective nonprofit foundation that has been established
5 to receive contributions exclusively for that university and

6 which exists on January 1, 2005. Any such investment is
7 subject to the limitations of this section.

8 (b) A governing board, through its chief financial officer
9 may enter into agreements, approved as to form by the State
10 Treasurer, for the investment by its foundation of certain funds
11 subject to their administration. Any interest or earnings on the
12 moneys invested is retained by the investing university.

13 (c) Moneys of a university that may be invested with its
14 foundation pursuant to this section are those subject to the
15 administrative control of the university that are collected
16 under an act of the Legislature for specific purposes and do
17 not include any funds made available to the university from
18 the state General Revenue Fund or the funds established in
19 sections eighteen or eighteen-a, article twenty-two, chapter
20 twenty-nine of this code. Moneys permitted to be invested
21 under this section may be aggregated in an investment fund
22 for investment purposes.

23 (d) Of the moneys authorized for investment by this
24 section, Marshall University and West Virginia University
25 each, respectively, may have invested with its foundation at
26 any time not more than the greater of:

27 (1) $18 million for Marshall University and $25 million
28 for West Virginia University; or

29 (2) Sixty-five percent of its unrestricted net assets as
30 presented in the statement of net assets for the fiscal year end
31 audited financial reports.

32 (e) Investments by foundations that are authorized under
33 this section shall be made in accordance with and subject to
34 the provisions of the Uniform Prudent Investor Act codified
35 as article six-c, chapter forty-four of this code. As part of its
36 fiduciary responsibilities, each governing board shall establish
37 investment policies in accordance with the Uniform Prudent

Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(g) The authority of a governing board to invest moneys with its foundation pursuant to this section expires on July 1, 2011.

(h) The amendments to this section in the second extraordinary session of the Legislature in 2010 shall apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.

CHAPTER 11

(Com. Sub. for H. B. 201 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed July 19, 2010; in effect from passage.]
[Approved by the Governor on July 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §3-10-4a, relating to filling a vacancy in the office of United States Senator; providing for an election to fill the unexpired term; requiring the election to occur in conjunction with the 2010 general election; providing for a special primary election to nominate party candidates for the 2010 general election; authorizing the Governor to appoint a person to serve as United States Senator until a successor is elected and qualified; providing that the provisions of the law relating to elections shall apply to the special primary election unless inconsistent with section; modifying certain statutory time periods; directing special primary election to be held on August 28, 2010; modifying certain statutory time lines relating to declaration of candidacy and early voting for special elections; modifying procedures relating to payment of filing fees, drawing of ballot positions, selecting and training individuals working as election official; clarifying the eligibility of certain minors to vote in special primary election; modifying statutory provisions relating to minimum number of ballots to be printed; modifying publications requirements of sample ballots, lists of candidates, and public testing of voting machines; providing applications deadlines for absentee ballots and procedures for changing

polling places; modifying procedures for persons without party affiliations to nominate candidates for the special general election; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines necessary to preserve voting rights, avoid fraudulent voting and other election irregularities and assure orderly and efficient administration of the special primary election; requiring the state to pay costs incurred in connection with a special election to fill a vacancy in the office of United States Senator; requiring Secretary of State to report to joint committee on government and finance and establishing guidelines for the report; providing for the expiration of the section; and clarifying that the special general election held on November 2, 2010, for the United States Senate vacancy is a separate election from the general election held on the same date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section designated as §3-10-4a, to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-4a. Special Senate vacancy election.

1 (a) Notwithstanding the provisions of section three of this
2 article establishing processes for the appointment and
3 election to fill a vacancy in the office of United States
4 Senator, for purposes of filling the vacant seat in the office of
5 United States Senator existing on July 1, 2010, a special
6 election shall be held to fill the unexpired term concurrent
7 with the general election of November 2, 2010. A special
8 primary election shall be held to nominate party candidates
9 for the November election.

10 (b) For the special primary election required to be held
11 prior to the November 2, 2010 election by operation of this

12 section upon its enactment during the second extraordinary
13 session of the Legislature, 2010, the Governor shall
14 immediately issue a proclamation calling for a special
15 primary election and general election. The special general
16 election shall be held on November 2, 2010. The following
17 provisions apply to these special elections:

18 (1) The proclamation for the special election shall be
19 published prior to the special election as a Class II-0 legal
20 advertisement in accordance with article three, chapter fifty-
21 nine of this code and the publication area for the publication
22 is each county of the state. The notice shall be filed with the
23 Secretary of State who shall immediately transmit the
24 document to the clerk of the county commission of each
25 county. The clerk of the county commission of each county
26 shall cause the document to be published within the county
27 in accordance with this section.

28 (2) The provisions of this chapter shall apply to this
29 special primary election to the extent that those provisions
30 are consistent with the provisions of this section. Statutory
31 time deadlines relating to availability of absentee ballots,
32 certification, canvassing and related election procedures that
33 cannot be met in a timely fashion, for the purpose of this
34 special election, are modified as follows:

35 (A) The special primary election is to be held August 28,
36 2010;

37 (B) A notarized declaration of candidacy and filing fee
38 shall be filed and received in hand by the Secretary of State
39 by 5:00 p.m. on the fourth calendar day following the
40 proclamation of the special primary election. The declaration
41 of candidacy may be filed in person, by United States mail,
42 electronic means or any other means authorized by the
43 Secretary of State;

(C) Early-in-person voting shall be conducted during regular business hours beginning on Friday, August 20, 2010 and continuing through close of business Wednesday, August 25, 2010. In addition, early-in-person voting shall be conducted from 9:00 a.m. to 5:00 p.m. on Saturday, August 21, 2010. No satellite polling locations will be utilized for the August 28, 2010 special primary election;

(D) The Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the election: *Provided,* That such emergency administrative orders may not contravene the provisions of this section;

(E) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the special election to fill a vacancy in the office of United States Senator are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the special election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies and facilities;

(F) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacant seat in the U.S. Senate may utilize the process set forth in section eight-a, article five of this chapter: *Provided,* That the minimum number of signatures required is one thousand seven hundred and forty;

(G) Drawing for ballot position will take place at the Secretary of State's office 24 hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party;

(H) The clerks of the county commission shall submit the list of persons who worked in the May 11, 2010 primary election to the county commission for appointment as election officials;

(I) Election officials shall be appointed by Tuesday, August 3, 2010;

(J) The clerks of the county commission shall provide notice to all election officials of the fact of their appointment by Wednesday, August 4, 2010. Included with the notice shall be a response notice form for the appointed person to return indicating if he or she agrees to serve in the specified capacity in the August 28, 2010 special primary election;

(K) The position of any election official notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve by Tuesday, August 10, 2010 is considered vacant and the clerk of the county commission shall proceed to fill the vacancies;

111 (L) Election officials shall be trained by Thursday,
112 August 19, 2010: *Provided*, That election officials who
113 attended training for the May 11, 2010 primary election are
114 exempt from additional training for the August 28, 2010
115 special primary election;

116 (M) A registered voter who has not reached eighteen
117 years of age may vote in the August 28, 2010 special primary
118 election: *Provided,* That the voter will attain eighteen years
119 of age at the time of the special general election;

120 (N) When paper or optical scan ballots are the primary
121 voting method used at any county, the total number of regular
122 official ballots printed shall equal at a minimum fifty percent
123 of the number of registered voters eligible to vote that ballot;

124 (O) When paper ballots are used in conjunction with a
125 direct recording electronic voting system, the total number of
126 regular official ballots printed shall equal at a minimum thirty
127 percent of the registered voters eligible to vote that ballot;

128 (P) For counties in which two or more qualified
129 newspapers publish a daily newspaper, the clerk of the
130 county commission shall publish at least once each sample
131 official August 28, 2010 primary ballot, on the last day on
132 which a newspaper is published immediately preceding the
133 August 28, 2010 special primary election, as a Class I-0 legal
134 advertisement in the two qualified daily newspapers of
135 different political parties within the county having the largest
136 circulation in compliance with the provisions of article three,
137 chapter fifty-nine of West Virginia Code;

138 (Q) For counties having no more than one daily
139 newspaper or having one or more qualified newspapers
140 which publish weekly, the clerk of the county commission
141 shall publish each sample official August 28, 2010 primary
142 ballot, on the last day in which a newspaper is published
143 immediately preceding the August 28, 2010 special primary

144 election, as a Class I-0 legal advertisement in the qualified
145 daily newspaper within the county having the largest
146 circulation in compliance with the provisions of article three,
147 chapter fifty-nine of West Virginia Code;

148 (R) Counties shall not be required to separately publish
149 a certified list of candidates;

150 (S) If only one notice of a sample ballot is published, it
151 shall include a statement notifying voters that this is the sole
152 publication of the sample ballot;

153 (T) Before voting machines are used, the clerks of the
154 county commission shall have the ballots, vote recording
155 devices, and electronic poll books inspected, and automatic
156 tabulating equipment tested to ascertain that it will accurately
157 count the votes cast. A single notice of the place and time of
158 the inspection and testing shall be published, no less than
159 three days in advance, as a class I-0 legal advertisement in
160 compliance with the provisions of article three, chapter
161 fifty-nine of West Virginia Code. The publication area is the
162 county involved;

163 (U) Applications for absentee ballots shall be accepted
164 from the date of proclamation, other than from voters eligible
165 to vote under the provisions of the Uniformed and Overseas
166 Citizens Absentee Voting Act who may apply for an absentee
167 ballot for all elections within a calendar year as early as the
168 first day of January of an election year;

169 (V) Regularly scheduled locations of polling places shall
170 not be changed, except for emergency situations as provided
171 for in §3-1-7(e) and (f): *Provided,* That if multiple precincts
172 voted in one polling location for the May 11, 2010 regularly
173 scheduled primary election, such precincts may be consolidated
174 into a single precinct. Locations for consolidated precincts shall
175 provide internet access, insofar as possible, for the sole

176 purpose of utilizing the Statewide Voter Registration System
177 (SVRS) as an electronic poll book; and

178 (W) Persons having no party affiliation may nominate
179 candidates for the U.S. Senate vacancy under the procedures
180 set forth in sections twenty-three and twenty-four, article five
181 of this chapter: *Provided,* That the number of signatures
182 required to be submitted shall be equal to not less than one-
183 quarter of one percent of the entire vote cast at the last
184 preceding general election for any statewide congressional or
185 presidential candidate. Notwithstanding the provisions of
186 sections twenty-three and twenty- four of article three of this
187 section, the signatures, notarized declaration of candidacy,
188 and filing fee must be submitted no later than August 23,
189 2010.

190 (c) The Secretary of State, shall by January 10, 2011,
191 report to the Joint Committee of Government and Finance
192 findings regarding of the operation of the special elections
193 undertaken pursuant to subsection (b) of this section. This
194 report shall provide analysis of: direct and indirect costs to
195 the state associated with the conduct of the election; benefits
196 and disadvantages of conducting an election on a Saturday;
197 the impact of compressed time periods on efficient election
198 administration; and whether this election process impacted
199 early voting and participation by military and overseas
200 voters.

201 (d) Any special election, which is held under the
202 provisions of this section and occurs concurrently with a
203 general election, shall be a separate election from the general
204 election.

205 (e) Upon the election and qualification of a United States
206 Senator by the United States Senate following the November
207 2, 2010 election, the provisions of this section will expire.

LEGISLATURE OF WEST VIRGINIA

ACTS

FOURTH EXTRAORDINARY SESSION, 2009

CHAPTER 1

(H. B. 408 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed November 20, 2009; in effect ninety days from passage.]
[Approved by the Governor on December 7, 2009.]

AN ACT to amend and reenact §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, all relating to the Alternative and Renewable Energy Portfolio Act; limiting the use of supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the use of advanced supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the Public Service Commission to certify additional advanced coal technologies; allowing for the utilization of an independent and industry-recognized alternative and renewable energy resource credit tracking system; exempting certain credit pricing data from disclosure under the freedom of information act; allowing for the utilization of an independent and industry-recognized entity to verify and certify greenhouse gas emission reduction or offset projects; allowing credits for certain energy efficiency and demand-side projects undertaken pursuant to federal

requirements; and requiring a study of the economic impacts of the Alternative and Renewable Energy Portfolio Act on coal and coal mining.

Be it enacted by the Legislature of West Virginia:

That §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-3. Definitions.
§24-2F-4. Awarding of alternative and renewable energy resource credits.
§24-2F-5. Alternative and renewable energy portfolio standard; compliance asessments.
§24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.

§24-2F-3. Definitions.

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

(1) "Advanced coal technology" means a technology that is used in a new or existing energy generating facility to reduce airborne carbon emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, advanced supercritical technology as that technology is determined by the Public Service Commission, ultrasupercritical technology and pressurized fluidized bed technology and any other resource, method, project or technology certified by the commission as advanced coal technology.

(2) "Alternative and renewable energy portfolio standard" or "portfolio standard" means a requirement in any given year that requires an electric utility to own credits in an amount equal to a certain percentage of electric energy sold in the preceding calendar year by the electric utility to retail customers in this state.

(3) "Alternative energy resources" means any of the following resources, methods or technologies for the production or generation of electricity:

(A) Advanced coal technology;

(B) Coal bed methane;

(C) Natural gas;

(D) Fuel produced by a coal gasification or liquefaction facility;

(E) Synthetic gas;

(F) Integrated gasification combined cycle technologies;

(G) Waste coal;

(H) Tirederived fuel;

(I) Pumped storage hydroelectric projects;

(J) Recycled energy, which means useful thermal, mechanical or electrical energy produced from: (i) Exhaust heat from any commercial or industrial process; (ii) waste gas, waste fuel or other forms of energy that would otherwise be flared, incinerated, disposed of or vented; and (iii) electricity or equivalent mechanical energy extracted from a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and

(K) Any other resource, method, project or technology certified as an alternative energy resource by the Public Service Commission.

(4) "Alternative and renewable energy resource credit" or "credit" means a tradable instrument that is used to establish,

verify and monitor the generation of electricity from alternative and renewable energy resource facilities, energy efficiency or demand-side energy initiative projects or greenhouse gas emission reduction or offset projects.

(5) "Alternative energy resource facility" means a facility or equipment that generates electricity from alternative energy resources.

(6) "Commission" or "Public Service Commission" means the Public Service Commission of West Virginia as continued pursuant to section three, article one of this chapter.

(7) "Customer-generator" means an electric retail customer who owns and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(8) "Electric utility" means any electric distribution company or electric generation supplier that sells electricity to retail customers in this state. Unless specifically provided for otherwise, for the purposes of this article, the term "electric utility" may not include rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia.

(9) "Energy efficiency or demand-side energy initiative project" means a project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of:

(A) Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

(B) Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand;

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or other manufacturing by-products that can be used in the direct production of electricity at the customer's facility;

(D) Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

(E) Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications (also known as "smart grid"), distribution automation, energy storage, distributed energy resources and investments to promote the electrification of transportation.

(10) "Greenhouse gas emission reduction or offset project" means a project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility's own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

(A) Methane capture and destruction from landfills, coal mines or farms;

(B) Forestation, afforestation or reforestation; and

(C) Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

(11) "Net metering" means measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used to offset part or all of the electric retail customer's requirements for electricity.

(12) "Reclaimed surface mine" means a surface mine, as that term is defined in section three, article three, chapter twenty-two of this code, that is reclaimed or is being reclaimed in accordance with state or federal law.

(13) "Renewable energy resource" means any of the following resources, methods, projects or technologies for the production or generation of electricity:

(A) Solar photovoltaic or other solar electric energy;

(B) Solar thermal energy;

(C) Wind power;

(D) Run of river hydropower;

(E) Geothermal energy, which means a technology by which electricity is produced by extracting hot water or steam from geothermal reserves in the earth's crust to power steam turbines that drive generators to produce electricity;

(F) Biomass energy, which means a technology by which electricity is produced from a nonhazardous organic material that is available on a renewable or recurring basis, including pulp mill sludge;

138 (G) Biologically derived fuel including methane gas,
139 ethanol not produced from corn, or biodiesel fuel;

140 (H) Fuel cell technology, which means any
141 electrochemical device that converts chemical energy in a
142 hydrogen-rich fuel directly into electricity, heat and water
143 without combustion; and

144 (I) Any other resource, method, project or technology
145 certified by the commission as a renewable energy resource.

146 (14) "Renewable energy resource facility" means a
147 facility or equipment that generates electricity from
148 renewable energy resources.

149 (15) "Waste coal" means a technology by which
150 electricity is produced by the combustion of the by-product,
151 waste or residue created from processing coal (such as gob).

§24-2F-4. Awarding of alternative and renewable energy resource credits.

1 (a) *Credits established.* -- The Public Service
2 Commission shall establish a system of tradable credits to
3 establish, verify and monitor the generation and sale of
4 electricity generated from alternative and renewable energy
5 resource facilities. The credits may be traded, sold or used to
6 meet the portfolio standards established in section five of this
7 article.

8 (b) *Awarding of credits.* -- Credits shall be awarded as
9 follows:

10 (1) An electric utility shall be awarded one credit for
11 each megawatt hour of electricity generated or purchased
12 from an alternative energy resource facility located within the
13 geographical boundaries of this state or located outside of the
14 geographical boundaries of this state but within the service
15 territory of a regional transmission organization, as that term

16 is defined in 18 C.F.R. §35.34, that manages the transmission
17 system in any part of this state;

18 (2) An electric utility shall be awarded two credits for
19 each megawatt hour of electricity generated or purchased
20 from a renewable energy resource facility located within the
21 geographical boundaries of this state or located outside of the
22 geographical boundaries of this state but within the service
23 territory of a regional transmission organization, as that term
24 is defined in 18 C.F.R. §35.34, that manages the transmission
25 system in any part of this state;

26 (3) An electric utility shall be awarded three credits for
27 each megawatt hour of electricity generated or purchased
28 from a renewable energy resource facility located within the
29 geographical boundaries of this state if the renewable energy
30 resource facility is sited upon a reclaimed surface mine; and

31 (4) A customer-generator shall be awarded one credit for
32 each megawatt hour of electricity generated from an
33 alternative energy resource facility and shall be awarded two
34 credits for each megawatt hour of electricity generated from
35 a renewable energy resource facility.

36 (c) *Acquiring of credits permitted.* --

37 (1) An electric utility may meet the alternative and
38 renewable energy portfolio standards set forth in this article
39 by purchasing additional credits. Credits may be bought or
40 sold by an electric utility or customer-generator or banked
41 and used to meet an alternative and renewable energy
42 portfolio standard requirement in a subsequent year.

43 (2) Each credit transaction shall be reported by the
44 selling entity to the Public Service Commission on a form
45 provided by the commission.

46 (3) As soon as reasonably possible after the effective
47 date of this section, the commission shall establish a registry

of data, or use an independent and industry-recognized system, that shall track credit transactions and shall list the following information for each transaction: (i) The parties to the transaction; (ii) the number of credits sold or transferred; and (iii) the price paid. Information contained in the registry shall be available to the public, except that pricing information concerning individual transactions shall be confidential and exempt from disclosure under subdivision (5), subsection (a), section four, article one, chapter twenty-nine-b of this code.

(4) The commission may impose an administrative transaction fee on a credit transaction in an amount not to exceed the actual direct cost of processing the transaction by the commission.

(d) *Credits for certain emission reduction or offset projects.* --

(1) The commission may award credits to an electric utility for greenhouse gas emission reduction or offset projects. For each ton of carbon dioxide equivalent reduced or offset as a result of an approved greenhouse gas emission reduction project, the commission shall award an electric utility one credit: *Provided,* That the emissions reductions and offsets are verifiable and certified in accordance with rules promulgated by the commission: *Provided, however,* That the commission has previously approved the greenhouse gas emission reduction and offset project for credit in accordance with section six of this article.

(2) The commission shall consult and coordinate with the Secretary of the Department of Environmental Protection or an independent and industry-recognized entity to verify and certify greenhouse gas emission reduction or offset projects. The Secretary of the Department of Environmental Protection shall provide assistance and information to the Public Service Commission and may enter into interagency

agreements with the commission to effectuate the purposes of this subsection.

(3) Notwithstanding the provisions of this subsection, an electric utility may not be awarded credits for a greenhouse gas emission reduction or offset project undertaken pursuant to any obligation under any other state law, policy or regulation.

(e) *Credits for certain energy efficiency and demand-side energy initiative projects.* --

(1) The commission may award credits to an electric utility for investments in energy efficiency and demand-side energy initiative projects. For each megawatt hour of electricity conserved as a result of an approved energy efficiency or demand-side energy initiative project, the commission shall award one credit: *Provided,* That the amount of electricity claimed to be conserved is verifiable and certified in accordance with rules promulgated by the commission: *Provided, however,* That the commission has approved the energy efficiency or demand-side energy initiative project for credit in accordance with section six of this article.

(2) Notwithstanding the provisions of this subsection, an electric utility may not be awarded credit for an energy efficiency or demand-side energy initiative project undertaken pursuant to any obligation under any other state law, policy or regulation.

§24-2F-5. Alternative and renewable energy portfolio standard; compliance assessments.

(a) *General rule.* -- Each electric utility doing business in this state shall be required to meet the alternative and renewable energy portfolio standards set forth in this section. In order to meet these standards, an electric utility each year

5 shall own an amount of credits equal to a certain percentage
6 of electricity, as set forth in subsections (c) and (d) of this
7 section, sold by the electric utility in the preceding year to
8 retail customers in West Virginia.

9 (b) *Counting of credits towards compliance.* -- For the
10 purpose of determining an electric utility's compliance with
11 the alternative and renewable energy portfolio standards set
12 forth in subsections (c) and (d) of this section, each credit
13 shall equal one megawatt hour of electricity sold by an
14 electric utility in the preceding year to retail customers in
15 West Virginia. Furthermore, a credit may not be used more
16 than once to meet the requirements of this section. No more
17 than ten percent of the credits used each year to meet the
18 compliance requirements of this section may be credits
19 acquired from the generation or purchase of electricity
20 generated from natural gas. No more than ten percent of the
21 credits used each year to meet the compliance requirements
22 of this section may be credits acquired from the generation or
23 purchase of electricity generated from supercritical
24 technology.

25 (c) *Twenty-five percent by 2025.* -- On and after January
26 1, 2025, an electric utility shall each year own credits in an
27 amount equal to at least twenty-five percent of the electric
28 energy sold by the electric utility to retail customers in this
29 state in the preceding calendar year.

30 (d) *Interim portfolio standards.* --

31 (1) For the period beginning January 1, 2015, and ending
32 December 31, 2019, an electric utility shall each year own
33 credits in an amount equal to at least ten percent of the
34 electric energy sold by the electric utility to retail customers
35 in this state in the preceding calendar year; and

36 (2) For the period beginning January 1, 2020, and ending
37 December 31, 2024, an electric utility shall each year own

38 credits in an amount equal to at least fifteen percent of the
39 electric energy sold by the electric utility to retail customers
40 in this state in the preceding calendar year.

41 (e) *Double-counting of credits prohibited.* -- Any portion
42 of electricity generated from an alternative or renewable
43 energy resource facility that is used to meet another state's
44 alternative energy, advanced energy, renewable energy or
45 similar energy portfolio standard may not be used to meet the
46 requirements of this section. An electric utility that is subject
47 to an alternative energy, advanced energy, renewable energy
48 or similar energy portfolio standard in any other state shall
49 list, in the alternative and renewable energy portfolio
50 standard compliance plan required under section six of this
51 article, any such requirements and shall indicate how it
52 satisfied those requirements. The electric utility shall provide
53 in the annual progress report required under section six of
54 this article any additional information required by the
55 commission to prevent double-counting of credits.

56 (f) *Carryover.* -- An electric utility may apply any credits
57 that are in excess of the alternative and renewable energy
58 portfolio standard in any given year to the requirements for
59 any future year portfolio standard: *Provided,* That the
60 electric utility determines to the satisfaction of the
61 commission that such credits were in excess of the portfolio
62 standard in a given year and that such credits have not
63 previously been used for compliance with a portfolio
64 standard.

65 (g) *Compliance assessments.* --

66 (1) On or after January 1, 2015, and each year thereafter,
67 the commission shall determine whether each electric utility
68 doing business in this state is in compliance with this section.
69 If, after notice and a hearing, the commission determines that
70 an electric utility has failed to comply with an alternative and
71 renewable energy portfolio standard, the commission shall

impose a compliance assessment on the electric utility which shall equal at least the lesser of the following:

(A) Fifty dollars multiplied by the number of additional credits that would be needed to meet an alternative and renewable energy portfolio standard in a given year; or

(B) Two hundred percent of the average market value of credits sold in a given year multiplied by the number of additional credits needed to meet the alternative and renewable energy portfolio standard for that year.

(2) Compliance assessments collected by the commission pursuant to this subsection shall be deposited into the Alternative and Renewable Energy Resources Research Fund established in section eleven of this article.

(h) *Force majeure.* --

(1) Upon its own initiative or upon the request of an electric utility, the commission may modify the portfolio standard requirements of an electric utility in a given year or years or recommend to the Legislature that the portfolio standard requirements be eliminated if the commission determines that alternative or renewable energy resources are not reasonably available in the marketplace in sufficient quantities for the electric utility to meet the requirements of this article.

(2) In making its determination, the commission shall consider whether the electric utility made good faith efforts to acquire sufficient credits to comply with the requirements of this article. Such good faith efforts shall include, but are not limited to, banking excess credits, seeking credits through competitive solicitations and seeking to acquire credits through long-term contracts. The commission shall assess the availability of credits on the open market. The commission may also require that the electric utility solicit credits before a request for modification may be granted.

(3) If an electric utility requests a modification of its portfolio standard requirements, the commission shall make a determination as to the request within sixty days.

(4) Commission modification of an electric utility's portfolio standard requirements shall apply only to the portfolio standard in the year or years modified by the commission. Commission modification may not automatically reduce an electric utility's alternative and renewable energy portfolio standard requirements in future years.

(5) If the commission modifies an electric utility's portfolio standard requirements, the commission may also require the electric utility to acquire additional credits in subsequent years equivalent to the requirements reduced by the commission in accordance with this subsection.

(i) *Termination* -- The provisions of this section shall have no force and effect after June 30, 2026.

§24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.

(a) *Interagency agreements.* -- The commission may enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities set forth in this article.

(b) *Alternative and renewable energy resource planning assessment.* -- The commission, in cooperation with the Department of Environmental Protection and the Division of Energy, shall conduct an ongoing alternative and renewable energy resource planning assessment for this state that shall, at a minimum: (i) Identify current and operating alternative and renewable energy resource facilities in this state; (ii) assess the potential to add future generating capacity in this state from alternative and renewable energy resource facilities; (iii) assess the conditions of the alternative and

15 renewable energy resource marketplace, including costs
16 associated with alternative and renewable energy; (iv) assess
17 the economic impacts of this article on coal and coal mining
18 in West Virginia; (v) recommend methods to maintain or
19 increase the relative competitiveness of the alternative and
20 renewable energy resource market in this state; and (vi)
21 recommend to the Legislature additional compliance goals
22 for alternative and renewable energy portfolio standards
23 beyond 2025.

24 The commission shall report the initial results of its
25 assessment to the Governor, the President of the Senate and
26 the Speaker of the House of Delegates within three years of
27 the effective date of this article and shall report the ongoing
28 results of the assessment on a yearly basis thereafter, except
29 that on or before January 1, 2012, the commission, in
30 collaboration with the Public Energy Authority, shall report
31 the initial results of its assessment to the Joint Committee on
32 Government and Finance.

CHAPTER 2

(H. B. 409 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on November 30, 2009.]

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 June 30, 2010, to the Governor's Office - Commission for National and Community Service, fund 8800, fiscal year 2010, organization 0100, to the

Department of Commerce - Division of Forestry, fund 8703, fiscal year 2010, organization 0305, to the Department of Education - West Virginia Schools for the Deaf and the Blind, fund 8716, fiscal year 2010, organization 0403, to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2010, organization 0511, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 8876, fiscal year 2010, organization 0601, and to the Public Service Commission, fund 8743, fiscal year 2010, organization 0926, by supplementing and amending chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Governor's Office - Commission for National and Community Service, fund 8800, fiscal year 2010, organization 0100, the Department of Commerce - Division of Forestry, fund 8703, fiscal year 2010, organization 0305, the Department of Education - West Virginia Schools for the Deaf and the Blind, fund 8716, fiscal year 2010, organization 0403, the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2010, organization 0511, the Department of Military Affairs and Public Safety - Office of the Secretary, fund 8876, fiscal year 2010, organization 0601, and the Public Service Commission, fund 8743, fiscal year 2010, organization 0926 which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 8800, fiscal year 2010, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

284-Governor's Office -
Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2010 Org 0100

	Activity	Federal Funds
2 Federal Economic Stimulus	891	$ 148,998

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 8703, fiscal year 2010, organization 0305, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF COMMERCE

293-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2010 Org 0305

	Activity	Federal Funds
1 Unclassified - Total	096	$ 6,000,000

And that chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill, be supplemented

and amended by adding to Title II, section six thereof, the following:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

304a-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 8716 FY 2010 Org 0403

	Activity	Federal Funds
1 Unclassified - Total	096	$ 320,000

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 8722, fiscal year 2010, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

317-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2010 Org 0511

	Activity	Federal Funds
4 Federal Economic Stimulus	891	$ 13,354,265

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 8876, fiscal year 2010, organization 0601, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

318-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2010 Org 0601

	Activity	Federal Funds
1 Unclassified - Total	096	$ 5,000,000

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 8743, fiscal year 2010, organization 0926, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

334-Public Service Commission-
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2010 Org 0926

	Activity	Federal Funds
2 Federal Economic Stimulus	891	$ 796,248

The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for the fiscal year ending June 30, 2010, by providing for a new item of appropriation to be established therein and to increase and add items of appropriation to the designated spending units for expenditure during the fiscal year 2010.

CHAPTER 3

(H. B. 410 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on November 30, 2009.]

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 Bureau of Senior Services, fund 0420, fiscal year 2010, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated August 10, 2009, setting forth therein the cash balance as of July 1, 2009, and further included the estimate of revenues for the fiscal year 2010, less net appropriation balances forwarded and regular appropriations for the fiscal year 2010; 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 June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 4020, fiscal year 2010, organization 0508, be supplemented and amended by adding an item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF SENIOR SERVICES

88–Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2010 Org 0508

			Activity	General Revenue Fund
1	1	Unclassified - Surplus	097	$ 2,500,000

The above appropriation shall be transferred to the Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens and shall be used along with the federal moneys generated thereby for reimbursement for services provided under the program.

The purpose of this supplemental appropriation bill is to supplement, amend, and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2010.

CHAPTER 4

(H. B. 411 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed November 20, 2009; in effect December 1, 2009.]
[Approved by the Governor on November 30, 2009.]

AN ACT supplementing, amending, and increasing an item of existing appropriation from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2010, organization 0803, for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature a statement of the State Road Fund on May 26, 2009, setting forth therein the cash balances and investments as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for fiscal year 2009, and further included the estimate of revenues for fiscal year 2010, less regular appropriations for fiscal year 2010; and

WHEREAS, It appears from the statement of the State Road Fund there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state road fund, fund 9017, fiscal year 2010, organization 0803, be amended and increased in the existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

93–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2010 Org 0803

			Activity	State Road Fund
1	3	Maintenance, Contract Paving and		
2	4	Secondary Road Maintenance .	272	$ 27,319,224

3 The purpose of this supplemental appropriation bill is to
4 supplement, amend, and increase an item of appropriation in
5 the aforesaid account for the designated spending unit for
6 expenditure during the fiscal year ending June 30, 2010.

CHAPTER 5

(H. B. 406 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on December 3, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-3B-1, §3-3B-2, §3-3B-3 and §3-3B-4, all relating to voting by members of the military and citizens residing outside the United States; creating a pilot program for military and overseas voters for the primary and general elections to be held during the year 2010; allowing counties that meet minimum requirements to participate in the pilot program; establishing participation requirements; providing for program selection by the Secretary of State; providing for the evaluation of pilot programs; requiring the submission of reports to Legislature; and establishing minimum voting system requirements.

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 §3-3B-1, §3-3B-2, §3-3B-3 and §3-3B-4, all to read as follows:

ARTICLE 3B. UNIFORMED SERVICES AND OVERSEAS VOTER PILOT PROGRAM.

§3-3B-1. Short title.
§3-3B-2. Uniformed services members and overseas votes pilot program.

§3-3B-3. Process for selection by Secretary of State.
§3-3B-4. Minimum requirements for pilot program voting system.

§3-3B-1. Short title.

1 This article shall be known as the "Uniformed Services
2 and Overseas Voter Pilot Program."

§3-3B-2. Uniformed services members and overseas voter pilot program.

1 This article authorizes a pilot program that will allow
2 counties that meet the minimum requirements contained in
3 section four to use available voting technology for the
4 purposes of voting by absent uniformed services members
5 and overseas citizens, as defined by 42 U.S.C. §1973ff, et
6 seq. Participation in the pilot program will assist counties and
7 the state in identifying areas for potential modification as
8 larger pilot programs of this type begin to be authorized by
9 the federal government under the Military and Overseas
10 Voter Empowerment Act Pub. L. No. 111-84 (2009). Pilot
11 programs authorized by this article are only applicable to the
12 primary and general elections to be held during the year
13 2010.

§3-3B-3. Process for selection by Secretary of State.

1 (a) On or before the close of business on January 8, 2010,
2 any county interested in participating in the pilot program
3 must submit a proposal to the Secretary of State. The
4 proposal shall include:

5 (1) The name of the vendor or vendors, if any, whose
6 voting system will be implemented for voting by uniformed
7 military and overseas citizen voters;

8 (2) The anticipated cost to the county of implementing
9 the proposal;

10 (3) The manner in which the voting system complies with
11 the provisions of section four of this article; and

12 (4) An option for the voter to choose not to vote using the
13 pilot voting system, but rather by mail, fax or e-mail at the
14 voter's discretion as provided for in sections five and five-b,
15 article three, chapter three of this code.

16 (b) The Secretary of State shall evaluate each proposal
17 and shall approve those proposals which meet the criteria
18 described in section four of this article.

19 (c) On or before January 29, 2010, each county that has
20 submitted a proposal shall be notified by the Secretary of
21 State that the application has either been approved or denied.

22 (d) Following the primary election, the Secretary shall
23 evaluate the functional effectiveness of pilot programs
24 conducted under this article and shall terminate any program
25 that fails to adequately and securely ensure that absent
26 uniformed services voters and overseas voters have their
27 absentee ballots cast and counted in the primary election.

28 (e) Ninety days following the 2010 primary election and
29 ninety days following the 2010 general election, the
30 Secretary shall submit to the Legislature reports on the
31 progress and outcomes of any pilot program conducted under
32 this article, together with recommendations:

33 (1) For the conduct of additional pilot programs; and

34 (2) For such other legislation as the Secretary determines
35 appropriate.

§3-3B-4. Minimum requirements for pilot program voting systems.

Provisions of sections eight and nine, article four-a, chapter three of this code notwithstanding, a voting system may be approved by the Secretary of State for use in the pilot program authorized by this article if it meets the following minimum requirements:

(1) Basic Operational Elements of the Online Voting System.

(A) System is web-based.

(B) System has an intuitive, easy-to-navigate interface.

(C) System is localized (in terms of date, time and address formats) to major areas in the world.

(D) System can handle five thousand voters over ten days, with likely spikes in use at beginning and end of voting period.

(2) Accessability.

(A) System interoperates with a wide variety of client-side platforms, including:

(i) Microsoft Windows;

(ii)MacOS;

(iii) Other common operating systems (Linux, etc.);

(iv) Internet Explorer version 3 or higher;

(v) Firefox version 3 or higher;

(vi) Safari version 1 or higher;

(vii) Opera version 3 or higher;

(viii) Netscape version 3 or higher; and

(ix) Chrome version 1 or higher.

(B) System does not require use of Java/Javascripts (or detects whether browser accepts Java/JavaScript and provides alternate interfaces.

(C) System detects whether browser accepts images and provides alternate interfaces.

(D) System works for users who use screen readers.

(E) System works for users who access the Internet using a text-only browser.

(F) System is sensitive to low-bandwidth/slow-modem environment of some users.

(3) Verification of Voters.

(A) System verifies a voter's member number, password and PIN number.

(B) System alerts administrator of suspected efforts at fraud (including repeated guesses of passwords, excessive votes from a single PC).

(4) Secret But Verifiable Ballots. System implements secret balloting, while allowing independent third-party monitors to verify that the ballots counted are the same as the ballots cast.

(5) Support for Ballot Marking Rules. System either:

47 (A) Does not allow mismarking of ballots; or

48 (B) Checks validity of ballots immediately upon
49 submission, and returns ballot to voter for resubmission if
50 there is an error.

51 (6) Data Security.

52 (A) System protects the security, integrity, and
53 confidentiality of members' personal data.

54 (B) System protects the security, integrity, and
55 confidentiality of ballots.

56 (C) Ideally, system provides no way for anyone (even
57 vendor employees) to determine how an individual voter
58 voted; at a minimum, system provides reasonable safeguards
59 to prevent such data access.

60 (7) Verifiability of Software and Procedures.

61 (A) System and vendor make it possible to verify that the
62 software performs according to specification.

63 (B) System and vendor make it possible to verify that the
64 vendor is running the software correctly.

65 (C) Vendor will allow independent third-party monitors
66 to review:

67 (i) Software, before and during election; and

68 (ii) Procedures (how many people have access to what
69 parts of the system, how passwords are issued, how backups
70 are done).

71 (D) System incorporates safeguards to assure that vendor
72 employees do not cast votes for users who do not vote.

(E) System provides mechanism for verifying that the system is operating the way it is supposed to; this may involve mathematical procedures or cryptographic protocols that will reveal if ballots have been tampered with, audit trails, or other mechanisms suggested by the vendor.

(F) System automatically verifies the number of ballots sent in and the size and consistency of the database(s), and warns the administrator and stops the voting until the administrator manually authorizes it to continue.

(8) Vendor Transparency and Openness.

(A) Vendor will be sufficiently transparent and open about the system's design and function so as to foster confidence among users.

(B) Vendor will allow independent third-party monitors to verify that the voting system is working according to the specification and proposal.

(9) Vendor Capability.

(A) Vendor is committed to the success of the voting system.

(B) Vendor provides access to 24-hour technical support during the 10-day voting period.

(C) Vendor has tested its voting systems in a production environment.

(D) Vendor will test the voting system prior to the election.

(E) Vendor has, and provides reference for, prior experience with similar systems.

CHAPTER 6

(S. B. 4001 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on December 7, 2009.]

AN ACT to amend and reenact §5-1-16a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-11-26 of said code, all relating to clarifying that records of the Governor, the Legislature and the Secretary of State pertaining to a grant of pardon are not subject to an order of expungement; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §5-1-16a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-11-26 of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor; Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

61. Crimes and Their Punishment.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 1. THE GOVERNOR.

§5-1-16a. Expungement of criminal record upon full and unconditional pardon.

(a) Any person who has received a full and unconditional pardon from the Governor, pursuant to the provisions of section eleven, article VII of the Constitution of West Virginia and section sixteen of this article, may petition the circuit court in the county where the conviction was had to have the record of such conviction expunged. The petition shall be served upon the prosecuting attorney of the county where the petition was filed. Any person petitioning the court for an order of expungement shall publish a notice of the time and place that such petition will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county where the petition is filed. The circuit court, upon verification of the act of pardon and after a hearing to determine that good cause exists, may enter an order directing that all public record of the petitioner's conviction be expunged. For the purposes of this section, "public record" or "record" does not include the records of the Governor, the Legislature or the Secretary of State that pertain to a grant of pardon. Such records that pertain to a grant of pardon are not subject to an order of expungement. The amendment to this section during the fourth extraordinary session of the Legislature in the year 2009 is not for the purpose of changing existing law, but is intended to clarify the intent of the Legislature as to existing law regarding expungement.

(b) The record expunged pursuant to the provisions of this section may not be considered in an application to any educational institution in this state or an application for any licensure required by any professional organization in this state.

(c) No person shall be eligible for expungement pursuant to this section until one year after having been pardoned.

(d) No person shall be eligible for expungement pursuant to this section until five years after the discharge of his or her sentence upon the conviction for which he or she was pardoned.

(e) No person shall be eligible for expungement of a record of conviction of first degree murder, as defined in section one, article two, chapter sixty-one of this code; treason, as defined in section one, article one of said chapter; kidnapping, as defined in section fourteen-a, article two of said chapter; or any felony defined in article eight-b of said chapter.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

(a) Any person convicted of a misdemeanor offense or offenses arising from the same transaction committed while he or she was between the ages of eighteen and twenty-six, inclusive, may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith. The clerk of the circuit court shall charge and collect in advance the same fee as is charged for instituting a civil action pursuant to subdivision (1), subsection (a), section eleven, article one, chapter fifty-nine of this code for a petition for expungement.

(b) Expungement shall not be available for any conviction of an offense listed in subsection (i) of this section. The relief

afforded by this subsection is only available to persons having no other prior or subsequent convictions other than minor traffic violations at the time the petition is filed: *Provided*, That at the time the petition is filed and during the time the petition is pending, petitioner may not be the subject of an arrest or any other pending criminal proceeding. No person shall be eligible for expungement pursuant to the provisions of subsection (a) of this section until one year after the conviction, completion of any sentence of incarceration or probation, whichever is later in time.

(c) Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information:

(1) Petitioner's current name and all other legal names or aliases by which petitioner has been known at any time;

(2) All of petitioner's addresses from the date of the offense or alleged offense in connection with which an expungement order is sought to date of the petition;

(3) Petitioner's date of birth and social security number;

(4) Petitioner's date of arrest, the court of jurisdiction and criminal complaint, indictment, summons or case number;

(5) The statute or statutes and offense or offenses for which petitioner was charged and of which petitioner was convicted;

(6) The names of any victim or victims, or that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution,

protection or restraining order prohibiting the petitioner from contacting the victim. If there is such a current order, petitioner shall attach a copy of that order to his or her petition;

(8) The court's disposition of the matter and punishment imposed, if any;

(9) Why expungement is sought, such as, but not limited to, employment or licensure purposes, and why it should be granted;

(10) The steps the petitioner has taken since the time of the offenses toward personal rehabilitation, including treatment, work or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, any other state or by any federal court; and

(12) Any supporting documents, sworn statements, affidavits or other information supporting the petition to expunge.

(d) A copy of the petition, with any supporting documentation, shall be served by petitioner pursuant to the rules of the trial court upon the Superintendent of the State Police; the prosecuting attorney of the county of conviction; the chief of police or other executive head of the municipal police department wherein the offense was committed; the chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner; the superintendent or warden of any institution in which the petitioner was confined; the magistrate court or municipal court which disposed of the petitioner's criminal charge; and all other state and local government agencies whose records

76 would be affected by the proposed expungement. The
77 prosecutorial office that had jurisdiction over the offense or
78 offenses for which expungement is sought shall serve by first
79 class mail the petition for expungement, accompanying
80 documentation and any proposed expungement order to any
81 identified victims.

82 (e) Upon receipt of a petition for expungement, the
83 Superintendent of the State Police; the prosecuting attorney of
84 the county of conviction; the chief of police or other executive
85 head of the municipal police department wherein the offense
86 was committed; the chief law-enforcement officer of any other
87 law-enforcement agency which participated in the arrest of the
88 petitioner; the superintendent or warden of any institution in
89 which the petitioner was confined; the magistrate court or
90 municipal court which disposed of the petitioner's criminal
91 charge; all other state and local government agencies whose
92 records would be affected by the proposed expungement and
93 any other interested individual or agency that desires to oppose
94 the expungement shall, within thirty days of receipt of the
95 petition, file a notice of opposition with the court with
96 supporting documentation and sworn statements setting forth the
97 reasons for resisting the petition for expungement. A copy of
98 any notice of opposition with supporting documentation and
99 sworn statements shall be served upon the petitioner in
100 accordance with trial court rules. The petitioner may file a reply
101 no later than ten days after service of any notice of opposition to
102 the petition for expungement.

103 (f) The burden of proof shall be on the petitioner to prove
104 by clear and convincing evidence that: (1) The conviction or
105 convictions for which expungement is sought are the only
106 convictions against petitioner and that the conviction or
107 convictions are not excluded from expungement by
108 subsection (j) of this section; (2) that the requisite time period
109 has passed since the conviction or convictions or end of the
110 completion of any sentence of incarceration or probation; (3)
111 petitioner has no criminal charges pending against him or

her; (4) the expungement is consistent with the public welfare; (5) petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and (6) any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement.

(g) Within sixty days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition if the court determines that the petition is insufficient or, based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to expungement.

(h) If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and any other matter the court deems proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

(i) No person shall be eligible for expungement of a conviction and the records associated therewith pursuant to

144 the provisions of subsection (a) of this section for any
145 violation involving the infliction of serious physical injury;
146 involving the provisions of article eight-b of this chapter
147 where the petitioner was eighteen years old, or older, at the
148 time the violation occurred and the victim was twelve years
149 of age, or younger, at the time the violation occurred;
150 involving the use or exhibition of a deadly weapon or
151 dangerous instrument; of the provisions of subsection (b) or
152 (c), section nine, article two of this chapter where the victim
153 was a spouse, a person with whom the person seeking
154 expungement had a child in common or with whom the
155 person seeking expungement ever cohabitated prior to the
156 offense; any violation of the provisions of section twenty-
157 eight of said article; a conviction for driving under the
158 influence of alcohol, controlled substances or a conviction for
159 a violation of section three, article four, chapter seventeen-b
160 of this code or section nineteen, article eight of this chapter.

161 (j) If the court grants the petition for expungement, it
162 shall order the sealing of all records in the custody of the
163 court and expungement of any records in the custody of any
164 other agency or official, including law-enforcement records.
165 Every agency with records relating to the arrest, charge or
166 other matters arising out of the arrest or conviction that is
167 ordered to expunge records shall certify to the court within
168 sixty days of the entry of the expungement order that the
169 required expungement has been completed. All orders
170 enforcing the expungement procedure shall also be sealed.
171 For the purposes of this section, "records" do not include the
172 records of the Governor, the Legislature or the Secretary of
173 State that pertain to a grant of pardon. Such records that
174 pertain to a grant of pardon are not subject to an order of
175 expungement. The amendment to this section during the
176 fourth extraordinary session of the Legislature in the year
177 2009 is not for the purpose of changing existing law, but is
178 intended to clarify the intent of the Legislature as to existing
179 law regarding expungement.

(k) Upon expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit or other type of application.

(l) Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting a petition to inspect the sealed record, it may be granted.

CHAPTER 7

(S. B. 4004 - By Senators Tomblin, Mr. President, and Caruth)
[By Request of the Executive]

[Passed November 20, 2009; in effect from passage.]
[Approved by the Governor on December 7, 2009.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18b of said code, all relating to adjusting the minimum values for computations relating to the flat rate and variable rate of the motor fuel excise tax; increasing the annual minimum average wholesale price of motor fuel computation;

establishing variable restrictions on the average wholesale price of motor fuel computation; terminating the Motor Fuel Excise Tax Shortfall Reserve Fund; and transferring all moneys remaining in the fund to the State Road Fund for the purpose of reconstructing, renovating, maintaining or repairing secondary roads.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-18b of said code be amended and reenacted, all to read as follows:

Article
14C. Motor Fuel Excise Tax.
15. Consumers Sales and Service Tax.

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.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to $.205 per invoiced gallon plus a variable component comprised of either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable: *Provided*, That the motor fuel excise tax shall take effect January 1, 2004: *Provided, however,* That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: *Provided further*, That the average wholesale price shall be no less than $.97 per invoiced gallon and is computed as hereinafter prescribed in this section: *And provided further*, That on and after January 1, 2010, the average wholesale price shall be no less than $2.34 per invoiced gallon and is computed as hereinafter prescribed in this section.

(b) *Determination of average wholesale price.* --

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by any other means as the Tax Commissioner considers reasonable.

(2) The "average wholesale price" means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel, as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather, or a combination of information: *Provided*, That in no event shall the average wholesale price be determined to be less than $.97 per gallon of motor fuel: *Provided, however*, That for calendar year 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21, 2007, and published in the State Register on November 30, 2007: *Provided further*, That on and after January 1, 2010, in no event shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel: *And provided further*, That on and after January 1, 2011, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year.

52 (3) All actions of the Tax Commissioner in acquiring data
53 necessary to establish and determine the average wholesale
54 price of motor fuel, in providing notification of his or her
55 determination prior to the effective date of any change in
56 rate, and in establishing and determining the average
57 wholesale price of motor fuel may be made by the Tax
58 Commissioner without compliance with the provisions of
59 article three, chapter twenty-nine-a of this code.

60 (4) In any administrative or court proceeding brought to
61 challenge the average wholesale price of motor fuel as
62 determined by the Tax Commissioner, his or her
63 determination is presumed to be correct and shall not be set
64 aside unless it is clearly erroneous.

65 (c) There is hereby levied a floorstocks tax on motor fuel
66 held in storage outside the bulk transfer/terminal system as of
67 the close of the business day preceding January 1, 2004, and
68 upon which the tax levied by this section has not been paid.
69 For the purposes of this section, "close of the business day"
70 means the time at which the last transaction has occurred for
71 that day. The floorstocks tax is payable by the person in
72 possession of the motor fuel on January 1, 2004. The amount
73 of the floorstocks tax on motor fuel is equal to the sum of the
74 tax rate specified in subsection (a) of this section multiplied
75 by the gallons in storage as of the close of the business day
76 preceding January 1, 2004.

77 (1) Persons in possession of taxable motor fuel in storage
78 outside the bulk transfer/terminal system as of the close of
79 the business day preceding January 1, 2004, shall:

80 (A) Take an inventory at the close of the business day
81 preceding January 1, 2004, to determine the gallons in
82 storage for purposes of determining the floorstocks tax;

83 (B) Report no later than January 31, 2004, the gallons on
84 forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than June 1, 2004.

(2) In the event the tax due is paid to the commissioner on or before January 31, 2004, the person remitting the tax may deduct from their remittance five percent of the tax liability due.

(3) In the event the tax due is paid to the commissioner after June 1, 2004, the person remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax liability due.

(4) In determining the amount of floorstocks tax due under this section, the amount of motor fuel in dead storage may be excluded. There are two methods for calculating the amount of motor fuel in dead storage:

(A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more, the amount of motor fuel in dead storage is four hundred gallons; or

(B) Use the manufacturer's conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe: *Provided*, That the distance between the bottom of the tank and the bottom of the mouth of the draw pipe is presumed to be six inches.

(d) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change,

116 and shall pay to the commissioner at the time of filing the
117 report any additional tax due under the increased rate.

§11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund support payment.

1 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.
7 At the end of each fiscal year, during the fund's existence,
8 the moneys in the fund shall not expire to the General Fund,
9 but shall remain available for expenditure during the ensuing
10 fiscal year. The fund shall terminate on December 1, 2009.
11 Any moneys remaining in the fund on that termination date
12 shall be transferred to the State Road Fund and used only for
13 the purpose of reconstruction, renovation, maintenance and
14 repair of secondary roads.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18b. Tax on motor fuel effective January 1, 2004.

1 (a) *General.* -- Effective January 1, 2004, all sales of
2 motor fuel subject to the flat rate of the tax imposed by
3 section five, article fourteen-c of this chapter are subject to
4 the tax imposed by this article which shall comprise the
5 variable component of the tax imposed by said section and be
6 collected and remitted at the time the tax imposed by said
7 section is remitted. Sales of motor fuel upon which the tax
8 imposed by this article has been paid shall not thereafter be
9 again taxed under the provisions of this article. This section
10 is construed so that all gallons of motor fuel sold and
11 delivered, or delivered, in this state are taxed one time.

(b) *Measure of tax.* -- The measure of tax imposed by this article on sales of motor fuel is the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be determined to be less than $.97 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary: *Provided,* That on and after January 1, 2010, for the purpose of taxation under this article, in no case shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) *Definitions.* -- For purposes of this article, the terms "gasoline" and "special fuel" are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in said article.

(d) *Tax return and tax due.* -- The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary: *Provided*, That the commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax: *Provided, however,* That if no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(e) *Compliance.* -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under said article is the last day of each month, notwithstanding any provision in said article to the contrary.

(f) *Dedication of tax.* -- All tax collected under the provisions of this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the Road Fund in the State Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes: *Provided*, That notwithstanding any provision to the contrary, any tax collected on the sale of aviation fuel after deducting the amount of any refunds lawfully paid shall be deposited in the State Treasurer's office and transferred to the State Aeronautical Commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(g) *Construction.* -- This section is not construed as taxing any sale of motor fuel which this state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(h) *Effective date.* -- The provisions of this section take effect on January 1, 2004. The provisions of this section enacted during the 2007 legislative session take effect on January 1, 2008.

CHAPTER 8

(S. B. 4007 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on December 3, 2009.]

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; to amend and reenact §5-10D-1 of said code; to amend and reenact §8-22-16, §8-22-17, §8-22-19, §8-22-20, §8-22-20a, §8-22-22, §8-22-22a, §8-22-23a and §8-22-27 of said code; to amend said code by adding thereto two new sections, designated §8-22-18a and §8-22-18b; to amend said code by adding thereto a new article, designated §8-22A-1, §8-22A-2, §8-22A-3, §8-22A-4, §8-22A-5, §8-22A-6, §8-22A-7, §8-22A-8, §8-22A-9, §8-22A-10, §8-22A-11, §8-22A-12, §8-22A-13, §8-22A-14, §8-22A-15, §8-22A-16, §8-22A-17, §8-22A-18, §8-22A-19, §8-22A-20, §8-22A-21, §8-22A-22, §8-22A-23, §8-22A-24, §8-22A-25, §8-22A-26, §8-22A-27, §8-22A-28, §8-22A-29, §8-22A-30, §8-22A-31 and §8-22A-32; to amend and reenact §33-3-14d of said code; and to amend and reenact §33-12C-7 of said code, all relating to pension benefits for municipal police officers and firefighters; authorizing Consolidated Public Retirement Board to administer a retirement system for newly hired municipal police officers and firefighters; expanding membership of the retirement board; permitting a municipality by a majority vote of its governing body to close its policemen's or firemen's pension and relief fund to new employees and to place newly hired municipal police officers and firefighters into a new

retirement system entitled the West Virginia Municipal Police Officers and Firefighters Retirement System; permitting an optional method of financing unfunded liabilities of existing municipal policemen's and firemen's pension and relief funds; preserving benefits under existing municipal policemen's and firemen's pension and relief funds; amending duties of local pension boards of trustees; creating the West Virginia Municipal Pensions Oversight Board and establishing powers and duties; providing for rules and emergency rules; creating Municipal Pensions Security Fund; providing for transfer of certain duties from the State Treasurer to the oversight board; amending time in which municipal and employee contributions must be made to pension and relief funds; increasing contribution requirement for new pension and relief fund members; requiring electronic funds transfer for certain funds; providing for actuary; providing for investment of funds; providing for disability examination and light-duty employment; amending investment requirements and restrictions; creating the West Virginia Municipal Police Officers and Firefighters Retirement System and the West Virginia Municipal Police Officers and Firefighters Retirement Fund; defining terms; establishing eligibility, administration, contributions and benefits; limiting liability; establishing criminal penalties; providing for retroactive membership in certain circumstances; and reallocating tax revenue.

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; that §5-10D-1 of said code be amended and reenacted; that §8-22-16, §8-22-17, §8-22-19, §8-22-20, §8-22-20a, §8-22-22, §8-22-22a, §8-22-23a and §8-22-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §8-22-18a and §8-22-18b; that said code be amended by adding thereto a new article, designated §8-22A-1, §8-22A-2, §8-22A-3, §8-22A-4, §8-22A-5, §8-22A-6, §8-22A-7, §8-22A-8, §8-22A-9, §8-22A-10, §8-22A-11, §8-22A-12, §8-22A-13, §8-22A-14, §8-22A-15, §8-

22A-16, §8-22A-17, §8-22A-18, §8-22A-19, §8-22A-20, §8-22A-21, §8-22A-22, §8-22A-23, §8-22A-24, §8-22A-25, §8-22A-26, §8-22A-27, §8-22A-28, §8-22A-29, §8-22A-30, §8-22A-31 and §8-22A-32; that §33-3-14d of said code be amended and reenacted; and that §33-12C-7 of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
8. Municipal Corporations.
33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article

10C. Government Employees Retirement Plans.
10D. Consolidated Public Retirement Board.

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.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and

contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in article twenty-two, chapter eight of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by section twenty-nine, article ten of this chapter from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by section twenty-six, article two, chapter fifteen of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by section seven, article fourteen-d, chapter seven of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by section fourteen, article seven-a, chapter eighteen of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required

by section fourteen-a, article seven-a of said chapter or by section four-a, article twenty-three of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by section four, article nine, chapter fifty-one of this code from employees who are members of the Judges' Retirement System; the contributions required by section nineteen, article twenty-two, chapter eight of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by section eight, article twenty-two-a, chapter eight of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by section nine, article seven-b, chapter eighteen of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by section five, article two-a, chapter fifteen of this code from the employees who are members of the West Virginia State Police Retirement System; or the contributions required by section eight, article five-v, chapter sixteen of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System.

(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the

state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; and any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by or approved by the Department of Health and Human Resources for the provision of community health or mental retardation services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in article ten of this chapter; the West Virginia State Police Death, Disability and Retirement Fund created in sections twenty-six through thirty-nine-a, inclusive, article two, chapter fifteen of this code; the West Virginia Deputy Sheriff Retirement System created in article fourteen-d, chapter seven of this code; the state Teachers Retirement System created in article seven-a, chapter eighteen of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in section fourteen-a, article seven-a of said chapter and section four-a, article twenty-three of said chapter; the Judges' Retirement System created in article nine, chapter fifty-one of this code; the firemen's or policemen's pension and relief funds created in section sixteen, article twenty-two, chapter eight of this code;

112 the Municipal Police Officers and Firefighters Retirement
113 System created in section four, article twenty-two-a, chapter
114 eight of this code; the Teachers' Defined Contribution
115 Retirement System created in article seven-b, chapter
116 eighteen of this code; the West Virginia State Police
117 Retirement System created in article two-a, chapter fifteen of
118 this code; or the West Virginia Emergency Medical Services
119 Retirement System created in article five-v, chapter sixteen
120 of this code.

121 (9) "Teacher" has the meaning ascribed to the term
122 "teacher member" in section three, article seven-a, chapter
123 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 June 30, 1986. Any political subdivision
7 that is a participating public employer in the West Virginia
8 Public Employees Retirement System shall pick-up and pay
9 the contributions which the employees are required by law to
10 make to the retirement system in which they are members for
11 all compensation earned by its member employees after
12 January 1, 1995. Public employers participating in the
13 Municipal Police Officers and Firefighters Retirement
14 System shall pick-up and pay the contributions which the
15 employees are required by law to make to the system in
16 which they are members for all compensation earned by its
17 member employees beginning January 1, 2010. Counties
18 shall pick-up and pay the contributions which the employees
19 are required by law to make to the Deputy Sheriff Retirement
20 System in which they are members for all compensation

earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, 1995. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to article ten of this chapter; article fourteen-d, chapter seven of this code; article twenty-two-a, chapter eight of this code; article two, chapter fifteen of this code; article seven-a, chapter eighteen of this code; article nine, chapter fifty-one of this code; section four-a, article twenty-three, chapter eighteen of this code; section sixteen, article twenty-two, chapter eight of this code; article seven-b, chapter eighteen of this code; article two-a, chapter fifteen of this code; and article five-v, chapter sixteen of this code qualify under Section 401 of the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with

19 the statutes or regulations governing the Internal Revenue
20 Service, the respective boards of trustees, in the adoption of
21 the deferred compensation plan, shall adopt the terminology
22 with respect to those sections that comply with the statutes or
23 regulations governing the Internal Revenue Service.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is
2 continued to administer all public retirement plans in this
3 state. It shall administer the Public Employees Retirement
4 System established in article ten of this chapter; the Teachers
5 Retirement System established in article seven-a, chapter
6 eighteen of this code; the Teachers' Defined Contribution
7 Retirement System created by article seven-b of said chapter;
8 the West Virginia State Police Death, Disability and
9 Retirement Fund created by article two, chapter fifteen of this
10 code; the West Virginia State Police Retirement System
11 created by article two-a of said chapter; the Deputy Sheriff
12 Death, Disability and Retirement Fund created by article
13 fourteen-d, chapter seven of this code; the Judges'
14 Retirement System created under article nine, chapter fifty-
15 one of this code; the Emergency Medical Services Retirement
16 System established in article five-v, chapter sixteen of this
17 code; and the Municipal Police Officers and Firefighters
18 Retirement System established in article twenty-two-a,
19 chapter eight of this code.

20 (b) The membership of the Consolidated Public
21 Retirement Board consists of:

22 (1) The Governor or his or her designee;

(2) The State Treasurer or his or her designee;

(3) The State Auditor or his or her designee;

(4) The Secretary of the Department of Administration or his or her designee;

(5) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and

(6) A member, annuitant or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the West Virginia State Police Death, Disability and Retirement Fund; a member, annuitant or retirant of the Deputy Sheriff Death, Disability and Retirement Fund; a member, annuitant or retirant of the Teachers' Defined Contribution Retirement System; a member, annuitant or retirant of the Emergency Medical Services Retirement System; and beginning as soon as practicable after January 1, 2010, one person who is a member, annuitant or retirant of a municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System, all to be appointed by the Governor, with the advice and consent of the Senate. The Governor shall choose the member representing the municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System from two names submitted by the state's largest organization of professional police officers and two names submitted by the state's largest organization of professional firefighters. Representation of the municipal police officers and

firefighters shall alternate after each term on the board between persons having police officer and firefighter affiliation so that each professional group is represented on the board every other term.

All appointees to the board shall have recognized competence or significant experience in pension management or administration, actuarial analysis, institutional management or accounting. Those members appointed prior to January 1, 2010, shall be considered to have met these qualifications. One trustee shall be an attorney experienced in finance and pension matters and one trustee shall be a certified public accountant. Each member of the board must complete annual fiduciary training and timely complete any conflict of interest forms required to serve as a trustee.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than six appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System established pursuant to article ten of this chapter; the Teachers Retirement System established pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System established pursuant to article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund

90 created pursuant to article fourteen-d, chapter seven of this
91 code; the Judges' Retirement System created pursuant to
92 article nine, chapter fifty-one of this code; the Emergency
93 Medical Services Retirement System established in article
94 five-v, chapter sixteen of this code; and the Municipal Police
95 Officers and Firefighters Retirement System created pursuant
96 to article twenty-two-a, chapter eight of this code, and their
97 appropriate governing boards.

98 (e) The Consolidated Public Retirement Board may
99 propose rules for legislative approval, in accordance with
100 article three, chapter twenty-nine-a of this code, necessary to
101 effectuate its powers, duties and responsibilities: *Provided,*
102 That the board may adopt any or all of the rules, previously
103 promulgated, of a retirement system which it administers.

104 (f) (1) The Consolidated Public Retirement Board shall
105 continue to transfer all funds received for the benefit of the
106 retirement systems, including, but not limited to, all employer
107 and employee contributions, to the West Virginia Investment
108 Management Board: *Provided,* That the employer and
109 employee contributions of the Teachers' Defined
110 Contribution Retirement System, established in section three,
111 article seven-b, chapter eighteen of this code, and voluntary
112 deferred compensation funds invested by the West Virginia
113 Consolidated Public Retirement Board pursuant to section
114 five, article ten-b of this chapter may not be transferred to the
115 West Virginia Investment Management Board.

116 (2) The board may recover from a participating employer
117 that fails to pay any amount due a retirement system in a
118 timely manner the contribution due and an additional amount
119 not to exceed interest or other earnings lost as a result of the
120 untimely payment, or a reasonable minimum fee, whichever
121 is greater, as provided by legislative rule promulgated
122 pursuant to the provisions of article three, chapter twenty-
123 nine-a of this code. Any amounts recovered shall be

administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: *Provided,* That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers' Defined Contribution Retirement System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers' Defined Contribution Retirement System.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

22. Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System.

22A. West Virginia Municipal Police Officers and Firefighters Retirement System.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART III. POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds; average adjusted salary.
§8-22-17. Power and duties of boards of trustees; training.
§8-22-18a. West Virginia Municipal Pensions Oversight Board created; powers and duties; management; composition; terms; quorum; expenses; reports.
§8-22-18b. Creation of Municipal Pensions Security Fund; transfer of certain powers, duties and functions of Treasurer's office to Municipal Pensions Oversight Board.
§8-22-19. Levy to maintain fund.
§8-22-20. Actuary; acturial valuation report; minimum standards for annual municipality contributions to the fund; definitions; acturial review and audit.
§8-22-20a. Hiring of actuary; preparation of actuarial valuations.
§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.
§8-22-22a. Restrictions on investments; disclosure of fees and costs.
§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.
§8-22-27. General provisions concerning disability pensions; retirement pensions and death benefits.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds; average adjusted salary.

1 (a) Except as provided in subsection (e) of this section,
2 passed into law during the fourth extraordinary session of the
3 Legislature in 2009, in every Class I and Class II city having,
4 or which may hereafter have, a paid police department and a
5 paid fire department, or either of such departments, the
6 governing body shall, and in every Class III city and Class IV
7 town or village having, or which may hereafter have, a paid
8 police department and a paid fire department, or either of
9 such departments, the governing body may, by ordinance
10 provide for the establishment and maintenance of a
11 policemen's pension and relief fund and for a firemen's
12 pension and relief fund for the purposes hereinafter
13 enumerated and, thereupon, there shall be created boards of
14 trustees which shall administer and distribute the moneys
15 authorized to be raised by this section and the following
16 sections of this article. For the purposes of this section and

sections seventeen through twenty-eight, inclusive, of this article, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean any department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

(b) Any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former article six of this chapter or this article shall be or remain mandatory and shall be governed by the provisions of sections sixteen through twenty-eight, inclusive, of this article (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city) and shall not be affected by the transition from one class of municipal corporation to a lower class as specified in section three, article one of this chapter: *Provided,* That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city shall not be required to establish a pension and relief fund if the town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

(c) After June 30, 1981, for the purposes of sections sixteen through twenty-eight, inclusive, of this article, the word "member" means any paid police officer or firefighter who at time of appointment to a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001 -- Firefighters Professional Qualifications '74 as updated from year to year: *Provided,* That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

(d) For purposes of sections sixteen through twenty-eight, inclusive, of this article, the words "salary or compensation" mean remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: *Provided,* That the remuneration received by the member during any twelve-consecutive-month period used in determining benefits which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by the member in the two consecutive twelve-consecutive-month periods immediately preceding the twelve-consecutive-month period used in determining benefits shall be disregarded: *Provided, however,* That the "average adjusted salary" means the arithmetic average of each year's adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second twelve-consecutive-month period preceding such twelve-consecutive-month period used in determining benefits, "year-two" means the twelve-consecutive-month period immediately preceding the twelve-consecutive-month period used in determining benefits and "year-three" means the twelve-consecutive-month period used in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary"; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.

(e)(1) Any municipality, as that term is defined in section two, article one of this chapter, or municipal subdivision as

defined in section two, article twenty-two-a of this chapter may, by a majority vote of its governing body, close its existing policemen's or firemen's pension and relief fund to employees newly hired on or after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a retirement plan created in article twenty-two-a of this chapter and approved and administered by the West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new policemen's or firemen's pension and relief fund may be established under this section. A Class I or Class II municipality forming a new paid police department or paid fire department after June 30, 2010, shall, notwithstanding the provisions of section two, article twenty-two-a of this chapter, enroll the department members in the Municipal Police Officers and Firefighters Retirement System established in article twenty-two-a of this chapter.

(2) Any municipality using the alternative method of financing that elects to close an existing pension and relief fund to new hires pursuant to this subsection shall also adopt the optional method of financing the unfunded actuarial accrued liability of the existing policemen's or firemen's pension and relief fund as provided in subsection (e), section twenty of this article.

(3) Except as provided in section thirty-two, article twenty-two-a of this chapter, if the qualifying municipality elects to close enrollment in an existing municipal pension and relief fund to newly hired police officers and firefighters pursuant to this section, all current active members, retirees and other beneficiaries covered by the existing policemen's or firemen's pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

§8-22-17. Powers and duties of boards of trustees; training.

(a) Boards of trustees shall be public corporations by the name and style of "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)", or "The Board of Trustees of the Firemen's Pension and Relief Fund of (name of municipality)", as the case may be, by which names they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property for the use of the policemen's pension and relief fund or the firemen's pension and relief fund and have and use a common seal. In the absence of a seal, the seal of the president of the corporation shall be equivalent to a common seal. A board of trustees may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of the board.

(b) After June 30, 1981, any board of trustees and any members of a board shall, as fund fiduciaries, discharge their duties with respect to pension and relief funds solely in the interest of the members and members' beneficiaries for the exclusive purpose of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the fund.

(c) The board of trustees of each fund shall deliver a copy of the fund's current rules, regulations and procedures to the State Treasurer or oversight board established by section eighteen-a of this article on or before March 1, 2010, and thereafter within thirty days of any approved change in the rules, regulations or procedures.

(d) Each member of a board of trustees shall attend training in matters relating to trustee duties as may be required by the oversight board pursuant to section eighteen-a of this article.

§8-22-18a. West Virginia Municipal Pensions Oversight Board created; powers and duties; management; composition; terms; quorum; expenses; reports.

1 (a)(1) There is established, on the effective date of the
2 enactment of this section during the fourth extraordinary
3 session of the Legislature in 2009, the West Virginia
4 Municipal Pensions Oversight Board for the purpose of
5 monitoring and improving the performance of municipal
6 policemen's and firemen's pension and relief funds to assure
7 prudent administration, investment and management of the
8 funds. Management of the oversight board shall be vested
9 solely in the members of the oversight board. Duties of the
10 oversight board shall include, but not be limited to, assisting
11 municipal boards of trustees in performing their duties,
12 assuring the funds' compliance with applicable laws,
13 providing for actuarial studies, distributing tax revenues to
14 the funds, initiating or joining legal actions on behalf of
15 active or retired pension fund members or municipal boards
16 of trustees to protect interests of the members in the funds,
17 and taking other actions as may be reasonably necessary to
18 provide for the security and fiscal integrity of the pension
19 funds. The oversight board's authority to initiate legal action
20 does not preempt the authority of municipalities; municipal
21 policemen's and firemen's boards of trustees; or pension
22 fund active members, beneficiaries or others to initiate legal
23 action to protect interests in the funds. The oversight board
24 is created as a public body corporate. Establishment of the
25 oversight board does not relieve the municipal funds' boards
26 of trustees from their fiduciary and other duties to the funds,
27 nor does it create any liability for the funds on the part of the
28 state. Members and employees of the oversight board are not
29 liable personally, either jointly or severally, for debts or
30 obligations of the municipal pension and relief funds.
31 Members and employees of the oversight board have a
32 fiduciary duty toward the municipal pension and relief funds
33 and are liable for malfeasance or gross negligence.

34 Employees of the oversight board are nonclassified state
35 employees.

36 (2) The oversight board shall consist of nine members.
37 The executive director of the state's Investment Management
38 Board and the executive director of the state's Consolidated
39 Public Retirement Board, or their designees, shall serve as
40 voting ex-officio members. The other seven members shall
41 be citizens of the state who have been qualified electors of
42 the state for a period of at least one year next preceding their
43 appointment and shall be as follows: An active or retired
44 member of a municipal policemen's pension and relief fund
45 chosen from a list of three persons submitted to the Governor
46 by the state's largest professional municipal police officers
47 organization, an active or retired member of a municipal
48 firemen's pension and relief fund chosen from a list of three
49 persons submitted to the Governor by the state's largest
50 professional firefighters organization, an attorney
51 experienced in finance and investment matters related to
52 pensions management, two persons experienced in pension
53 funds management, one person who is a certified public
54 accountant experienced in auditing and one person chosen
55 from a list of three persons submitted to the Governor by the
56 state's largest association of municipalities.

57 (3) On the effective date of the enactment of this section
58 as amended during the fourth extraordinary session of the
59 Legislature in 2009, the Governor shall forthwith appoint the
60 members, with the advice and consent of the Senate. The
61 Governor may remove any member from the oversight board
62 for neglect of duty, incompetency or official misconduct.

63 (b) The oversight board has the power to:

64 (1) Enter into contracts, to sue and be sued, to implead
65 and be impleaded;

(2) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

(3) Maintain accounts and invest those funds which the oversight board is charged with receiving and distributing;

(4) Make, amend and repeal bylaws, rules and procedures consistent with the provisions of this article and article thirty-three of this code;

(5) Notwithstanding any other provision of law, retain or employ, fix compensation, prescribe duties and pay expenses of legal, accounting, financial, investment, management and other staff, advisors or consultants as it considers necessary, including the hiring of legal counsel and actuary; and

(6) Do all things necessary and appropriate to implement and operate the board in performance of its duties. Expenses shall be paid from the moneys in the Municipal Pensions Security Fund created in section eighteen-b of this article or, prior to the transition provided in section eighteen-b of this article, the Municipal Pensions and Protection Fund: *Provided,* That the board may request special appropriation for special projects.

(c) Except for ex-officio members, the terms of oversight board members shall be staggered initially from January 1, 2010. The Governor shall appoint initially one member for a term of one year, one member for a term of two years, two members for terms of three years, one member for a term of four years and two members for terms of five years. Subsequent appointments shall be for terms of five years. A member serving two full consecutive terms may not be reappointed for one year after completion of his or her second full term. Each member shall serve until that member's successor is appointed and qualified. Any member may be removed by the Governor in case of incompetency, neglect

of duty, gross immorality or malfeasance in office. Any vacancy on the oversight board shall be filled by appointment by the Governor for the balance of the unexpired term.

(d) A majority of the full authorized membership of the oversight board constitutes a quorum. The board shall meet at least quarterly each year, but more often as duties require, at times and places that it determines. The oversight board shall elect a chairperson and a vice chairperson from their membership who shall serve for terms of two years and shall select annually a secretary/treasurer who may be either a member or employee of the board. The oversight board shall employ an executive director and other staff as needed and shall fix their duties and compensation. The compensation of the executive director shall be subject to approval of the Governor. Except for any special appropriation as provided in subsection (b) of this section, all personnel and other expenses of the board shall be paid from revenue collected and allocated for municipal policemen's or municipal firemen's pension and relief funds pursuant to section fourteen-d, article three, chapter thirty-three of this code and distributed through the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund created in section eighteen-b of this article. Expenses during the initial year of the board's operation shall be from proceeds of the allocation for the municipal pensions and relief funds. Expenditures in years thereafter shall be by appropriation from the Municipal Pensions Security Fund. Money allocated for municipal policemen's and firemen's pension and relief funds to be distributed from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund shall be first allocated to pay expenses of the oversight board and the remainder in the fund distributed among the various municipal pension and relief funds as provided in section fourteen-d, article three, chapter thirty-three of this code. The board is exempt from the provisions of sections seven and eleven, article three, chapter twelve of

this code relating to compensation and expenses of members, including travel expenses.

(e) Members of the oversight board shall serve the board without compensation for their services: *Provided,* That no public employee member may suffer any loss of salary or wages on account of his or her service on the board. Each member of the board shall be reimbursed, on approval of the board, for any necessary expenses actually incurred by the member in carrying out his or her duties. All reimbursement of expenses shall be paid out of the Municipal Pensions Security Fund.

(f) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article: *Provided,* That no provision of this subsection may be construed to authorize the board to contract with other state boards or state agencies to otherwise perform the duties or exercise the responsibilities imposed on the board by this code.

(g) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of this article, and may initially promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(h) The oversight board shall report annually to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement concerning the status of municipal policemen's and firemen's pension and relief funds and shall present recommendations for strengthening and protecting the funds and the benefit interests of the funds' members.

166 (i) The oversight board shall cooperate with the West
167 Virginia Investment Management Board and the Board of
168 Treasury Investments to educate members of the local
169 pension boards of trustees on the services offered by the two
170 state investment boards. No later than October 31, 2013, the
171 board shall report to the Joint Committee on Government and
172 Finance and the Joint Committee on Pensions and Retirement
173 a detailed comparison of returns on long-term investments of
174 moneys held by or allocated to municipal pension and relief
175 funds managed by the West Virginia Investment
176 Management Board and those managed by others than the
177 Investment Management Board. The oversight board shall
178 also report at that time on short-term investment returns by
179 local pension boards using the West Virginia Board of
180 Treasury Investments compared to short-term investment
181 returns by those local boards of trustees not using the Board
182 of Treasury Investments.

183 (j) The oversight board shall establish minimum
184 requirements for training to be completed by each member of
185 the board of trustees of a municipal policemen's or firemen's
186 pension and relief fund. The requirements should include,
187 but not be limited to, training in ethics, fiduciary duty and
188 investment responsibilities.

189 (k) The Joint Committee on Pensions and Retirement
190 shall study deferred retirement option programs (DROPs) and
191 shall provide opportunities for professional police officer and
192 firefighter organizations to present information on DROPs to
193 the committee, to consider and evaluate elements of the
194 programs to assess how the programs may best serve the
195 public interest. The committee shall report any findings,
196 conclusions or recommendations, along with drafts of any
197 proposed legislation, to the Joint Committee on Government
198 and Finance by November 30, 2010.

§8-22-18b. Creation of Municipal Pensions Security Fund; transfer of certain powers, duties and functions of Treasurer's office to Municipal Pensions Oversight Board.

(a) The Legislature finds that an important part of oversight of municipal policemen's and firemen's pension and relief funds is monitoring the performance required of the various funds to qualify to receive distribution of insurance premium tax revenues provided by section fourteen-d, article three, chapter thirty-three of this code. The duties and functions of the State Treasurer's office with respect to monitoring and distribution are transferred from the State Treasurer's office to the West Virginia Municipal Pensions Oversight Board effective January 1, 2010: *Provided,* That until the oversight board is fully organized and operating, some duties and functions being performed by the State Treasurer's office prior to January 1, 2010, may be continued by that office temporarily as necessary to effect an orderly transition of responsibilities and provide for prompt distribution of the insurance premium tax proceeds for expenses of the oversight board and to the municipal policemen's and firemen's pension and relief funds.

(b) There is hereby created in the State Treasury a nonexpiring special revenue fund designated the West Virginia Municipal Pensions Security Fund which shall be administered by the West Virginia Municipal Pensions Oversight Board solely for the purposes as provided in this article and article three, chapter thirty-three of this code. All earnings shall accrue to and be retained by the fund.

(c) Until the oversight board advises the Insurance Commissioner and the State Treasurer in writing that the oversight board is prepared to receive into and distribute from the West Virginia Municipal Pensions Security Fund premium tax revenues as provided in section fourteen-d,

31 article three, chapter thirty-three of this code and section
32 seven, article twelve-c of said chapter, the commissioner
33 shall continue to transfer the funds into the Municipal
34 Pensions and Protection Fund and the State Treasurer shall
35 continue to disburse funds to the qualifying municipal
36 pension and relief funds, and shall disburse funds as
37 necessary for the establishment and early operation of the
38 oversight board. The Insurance Commissioner, the State
39 Treasurer and oversight board shall share information freely
40 as required for efficient transfer of powers and duties related
41 to the premium tax revenues generated pursuant to chapter
42 thirty-three of this code to be allocated to the municipal
43 policemen's and firemen's pension and relief funds. When
44 the oversight board assumes full responsibility to receive
45 funds into and disburse funds from the Municipal Pensions
46 Security Fund, the State Treasurer shall transfer to it all funds
47 remaining in the Municipal Pensions and Protection Fund and
48 close the Municipal Pensions and Protection Fund.

§8-22-19. Levy to maintain fund.

1 (a)(1) In order for a municipal policemen's or firemen's
2 pension and relief fund to receive the allocable portion of
3 moneys from the Municipal Pensions and Protection Fund
4 established in section fourteen-d, article three, chapter thirty-
5 three of this code and funds from the Municipal Pensions
6 Security Fund created in section eighteen-b of this article, the
7 governing body of the municipality shall levy annually and
8 in the manner provided by law for other municipal levies and
9 include within the maximum levy or levies permitted by law
10 and, if necessary, in excess of any charter provision, a tax at
11 such rate as will, after crediting: (A) The amount of the
12 contributions received during the year from the members of
13 the respective paid police department or paid fire department;
14 and (B) the allocable portion of the Municipal Pensions and
15 Protection Fund established in section fourteen-d, article
16 three, chapter thirty-three of this code and funds from the

17 Municipal Pensions Security Fund created in section
18 eighteen-b of this article, provide funds equal to the amount
19 necessary to meet the minimum standards for actuarial
20 soundness as provided in section twenty of this article. The
21 amount shall be irrevocably contributed, accumulated and
22 invested as fund assets as described in sections twenty-one
23 and twenty-two of this article. One twelfth of each
24 municipality's annual contributions shall be deposited with
25 the municipality's pension trust funds as fund assets on at
26 least a monthly basis and any revenues received from any
27 source by a municipality which are specifically collected for
28 the purpose of allocation for deposit into the policemen's
29 pension and relief fund or firemen's pension and relief fund
30 shall be so deposited within five days of receipt by the
31 municipality. Heretofore surplus reserves accumulated
32 before the effective date of this section shall be irrevocably
33 contributed, aggregated and invested as fund assets described
34 in sections twenty-one and twenty-two of this article. Any
35 actuarial deficiency arising under this section and section
36 twenty of this article shall not be the obligation of the State
37 of West Virginia.

38 (2) The levies authorized under the provisions of this
39 section, or any part of them, may by the governing body be
40 laid in addition to all other municipal levies and, to that
41 extent, beyond the limit of levy imposed by the charter of the
42 municipality; and the levies shall supersede and if necessary
43 exclude levies for other purposes, where other purposes have
44 not already attained priority, and within the limitations on
45 taxes or tax levies imposed by the constitution and laws.

46 (b) The public corporations are authorized to take by gift,
47 grant, devise or bequest any money or real or personal
48 property on such terms as to the investment and expenditures
49 thereof as may be fixed by the grantor or determined by the
50 trustees.

(c) Notwithstanding provisions in section six of this article, in addition to all other sums provided for pensions in this section, it is the duty of every municipality in which any fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of seven percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman: *Provided,* That for members of the funds who are police officers or firefighters newly hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half percent of the actual salary or compensation. Only those funds for which the board of trustees has collected and paid the contributions as herein provided and meeting minimum standards for actuarial soundness shall be eligible to receive moneys from the additional fire and casualty insurance premium tax as provided in section fourteen-d, article three, chapter thirty-three of this code: *Provided, however,* That the board of trustees for each pension and relief fund may assess and collect from each member of the paid police department or paid fire department or both each month not more than an additional two and one-half percent of the actual salary or compensation of each member, but not to exceed nine and one-half percent total contribution: *Provided further,* That if any board of trustees decides to assess and collect any additional amount pursuant to this subdivision above the member contribution required by this section, then that board of trustees may not reduce the additional amount until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further,* That if any board of trustees decides to assess and collect any additional amount, any board of trustees decision and any additional amount is not the liability of the State of West Virginia. Member contributions shall be deposited in the pension and relief fund within five days of being collected.

(d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of subsection (c), section eighteen-b of this article and section fourteen-d, article three, chapter thirty-three of this code and for each fiscal year thereafter, the Municipal Pensions Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to Municipal Pensions Oversight Board that:

(A) The municipality has irrevocably contributed the amount required under this section and section twenty of this article to the pension and relief fund for the required period; and

(B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year.

(2) When the aforementioned application and certification are made, the allocable portion of moneys from the Municipal Pensions and Protection Fund, or the Municipal Pensions Security Fund, once established, shall be paid to the corresponding policemen's or firemen's pension and relief fund. Payment to a municipal pension and relief fund shall be made by electronic funds transfer.

(e) The State Auditor and the oversight board have the power, and the duty as each considers necessary, to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and section twenty of this article. The expense of the audit or determination shall be paid from the portion of the Municipal Pensions and Protection Fund allocable to municipal policemen's and firemen's pension

and relief funds or from the Municipal Pensions Security Fund pursuant to provisions of subsection (c), section eighteen-b of this article. If the allocable portion of the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund is not paid to the pension and relief fund within eighteen months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen's and firemen's pension and relief funds in accordance with section fourteen-d, article three, chapter thirty-three of this code.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

(a) The oversight board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. The expense of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the actuarial valuations from the qualified actuary shall include, but not be limited to, determining a municipal policemen's or firemen's pension and relief fund's eligibility to receive state money and to provide supplemental benefits.

(b) The actuarial valuation report provided pursuant to subsection (a) of this section shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the

data was certified by the fund's auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) Except as provided in subsection (e) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code or a municipality's allocation from the Municipal Pensions Security Fund created in section eighteen-b of this article and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided,* That in the fiscal year ending June 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however,* That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than one hundred seven percent of the amount contributed in the prior fiscal year: *Provided further,* That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum

required by this section: *And provided further,* That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further,* That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further,* That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further,* That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in subdivision (4), subsection (b), section nineteen of this article, then the board of trustees is not eligible to receive funds allocated under section fourteen-d, article three, chapter thirty-three of this code: *And provided further,* That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive fifteen-year period. For purposes of determining this minimum financial objective: (i) The value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund: *And provided further,* That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than twenty-five percent of fund assets, may, beginning September 1, 2003,

elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years, beginning from July 1, 1991.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or firemen's pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report.

(4) The actuarial process, which includes the selection of methods and assumptions, shall be reviewed by the qualified actuary no less than once every five years. Furthermore, the qualified actuary shall provide a report to the oversight board with recommendations on any changes to the actuarial process.

(5) The oversight board shall hire an independent reviewing actuary to perform an actuarial audit of the work performed by the qualified actuary no less than once every seven years.

(d) For purposes of this section, the term "qualified actuary" means only an actuary who is a member of the

125 Society of Actuaries or the American Academy of Actuaries.
126 The qualified actuary shall be designated a fiduciary and
127 shall discharge his or her duties with respect to a fund solely
128 in the interest of the members and members' beneficiaries of
129 that fund. In order for the standards of this section to be met,
130 the qualified actuary shall certify that the actuarial valuation
131 report is complete and accurate and that in his or her opinion
132 the technique and assumptions used are reasonable and meet
133 the requirements of this section.

134 (e)(1) Beginning January 1, 2010, municipalities may
135 choose the optional method of financing municipal
136 policemen's or firemen's pension and relief funds as outlined
137 in this subsection in lieu of the standard or alternative
138 methods as provided in subdivision (1), subsection (c) of this
139 section. The optional method provides an option to the
140 existing standard or alternative methods of financing the
141 funds.

142 (2) For those municipalities choosing the optional method
143 of finance, the minimum standard for annual municipality
144 contributions to each policemen's or firemen's pension and
145 relief fund shall be an amount which, together with the
146 contributions from the members and allocable portion of the
147 Municipal Pensions and Protection Fund or Municipal
148 Pensions Security Fund created in section eighteen-b of this
149 article, and other income sources as authorized by law, will
150 be sufficient to meet the normal cost of the fund and amortize
151 any actuarial deficiency over a period of not more than forty
152 years beginning January 1, 2010: *Provided,* That those
153 municipalities using the standard method of financing in
154 2009 shall continue to amortize their actuarial deficiencies
155 over a period of not more than forty years beginning July 1,
156 1991. The required contribution shall be determined each
157 plan year as described above by the actuary retained by the
158 oversight board, based on an actuarial valuation reflecting
159 actual demographic and investment experience and consistent

with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(3) A municipality choosing the optional method of financing a policemen's or firemen's pension and relief fund as provided in this subsection shall close the fund to police officers or fire fighters newly hired on or after January 1, 2010, and provide for those employees to be members of the Municipal Police Officers and Firefighters Retirement System as established in article twenty-two-a of this chapter.

§8-22-20a. Hiring of actuary; preparation of actuarial valuations.

(a)(1) The Legislature finds that it is in the best interests of the state and its municipalities to have accurate data regarding the various municipal police and firemen's pension and relief funds.

(2) The Legislature finds that the State Treasurer should contract with an actuary as a consultant for the municipal police and firemen's pension and relief funds and among other duties the actuary shall determine if there is consistent reporting from the various funds. The Legislature further finds that the State Treasurer or oversight board should share the results of the actuary's annual valuation with the appropriate municipality.

(b) Except as hereinafter provided, beginning July 1, 2002, the State Treasurer shall select by competitive bid and contract with a single qualified actuary. The actuary shall serve as a consultant to the Treasurer with regard to the operation of the municipal policemen's and firemen's pension and relief funds and shall report annually to the Treasurer with regard to all funds existing in this state by virtue of this article. Costs associated with the actuary's work shall be paid out of the Municipal Pensions and Protection Fund established pursuant to section fourteen-d,

article three, chapter thirty-three of this code. The State Treasurer shall provide the single qualified actuary until the oversight board assumes the duty of providing for the actuary. Thereafter, it shall be the duty of the Municipal Pensions Oversight Board to contract for or to employ the single qualified actuary which, at a minimum, shall serve as a consultant to the oversight board and report annually to the oversight board with regard to all municipal policemen's and firemen's pension and relief funds existing in this state by virtue of this article, and which shall be paid from moneys deposited in the Municipal Pensions Security Fund. Copies of the annual report prepared by the actuary shall be sent to the Joint Committee on Government and Finance, the chair of the House of Delegates Committee on Pensions and Retirement and the chair of the Senate Committee on Pensions. Each municipal pension and relief fund shall receive a copy of the actuary's results related to that fund.

(c) With respect to each municipal policemen's or firemen's pension and relief fund, the actuary shall complete an annual valuation in accordance with actuarial standards of practice promulgated by the actuarial standards board of the American Academy of Actuaries. The report of the valuation shall include: (1) A summary of the benefit provisions evaluated; (2) a summary of the census data and financial information used in the valuation; (3) a description of the actuarial assumptions, actuarial costs method and asset valuation method used in the valuation, including a statement of the assumed rate of payroll growth and assumed rate of growth or decline in the number of the fund members' contributions to the pension fund; (4) a summary of findings that includes a statement of the actuarial accrued pension liabilities and unfunded actuarial accrued pension liabilities; (5) a schedule showing the effect of any changes in the benefit provisions, actuarial assumptions or cost methods since the last annual actuarial valuation; (6) a statement of whether contributions to the pension fund are in accordance

with the provisions of this chapter and whether they are expected to be sufficient; and (7) any other matters determined by the Treasurer or, on or after January 1, 2010, the oversight board, to be necessary or appropriate.

(d)(1) The hiring of an actuary under the provisions of this section shall not be construed to make the municipal policemen's and firemen's pension and relief funds the responsibility or obligation of the State of West Virginia.

(2) Any actuarial deficiency identified by the actuary under this section or this article is not an obligation of the State of West Virginia.

§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

(a) The board of trustees may invest a portion or all of the fund assets in any of the pools, funds and securities managed by the West Virginia Investment Management Board or West Virginia Board of Treasury Investments or as otherwise provided in this section. The board of trustees shall keep as an available sum for the purpose of making regular retirement, disability retirement, death benefit, payments and administrative expenses in an estimated amount not to exceed payments for a period of ninety days in short-term investments. The board of trustees, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund, shall do so in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. Within the limitations of the Uniform Prudent Investor Act, the board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it and not invested with the West Virginia Investment Management Board or West Virginia Board of Treasury Investments.

(b) The board of trustees of each fund may delegate investment authority to equity mutual funds managers and/or professional investment advisors registered with the Securities and Exchange Commission, in accordance with the Investment Advisors Act of 1940, and registered with the appropriate state regulatory agencies, if applicable, and who manage assets in excess of $75 million.

(c) The board of trustees of each fund shall deliver to the State Treasurer or oversight board on or before March 1, 2010, a copy of the pension and relief fund's investment policy. A board of trustees shall submit to the oversight board any change to the investment policy within thirty days of the board's authorizing the change.

§8-22-22a. Restrictions on investments; disclosure of fees and costs.

(a) Moneys invested as permitted by section twenty-two of this article and not invested with the West Virginia Investment Management Board or the Board of Treasury Investments are subject to the following restrictions and conditions contained in this section:

(1) The board shall hold in nonreal estate equity investments no more than seventy-five percent of the assets managed by the board and no more than seventy-five percent of the assets of any individual participant plan.

(2) The board shall hold in real estate equity investments no more than twenty-five percent of the assets managed by the board and no more than twenty-five percent of the assets of any individual participant plan: *Provided,* That the investment be made only on the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, on the approval of the board or a committee designated by the

board, and on the execution of the transaction by a third-party investment manager: *Provided, however,* That the board's ownership interest in any fund is less than forty percent of the fund's assets at the time of purchase: *Provided further,* That the combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the board's total investment in the fund at the time of acquisition. For the purposes of this subsection, "fund" means a real estate investment trust traded on a major exchange of the United States of America or a partnership, limited partnership, limited liability company or other entity holding or investing in related or unrelated real estate investments, at least three of which are unrelated and the largest of which is not greater than forty percent of the entity's holdings at the time of purchase.

(3) The board shall hold in international securities no more than thirty percent of the assets managed by the board and no more than thirty percent of the assets of any individual participant plan.

(4) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the nonreal estate equity securities of any single company or association: *Provided,* That if a company or association has a market weighting of greater than five percent in the Standard & Poor's 500 index of companies, the board may hold securities of that nonreal estate equity equal to its market weighting.

(5) No security may be purchased by the board unless the type of security is on a list approved by the board. The board may modify the securities list at any time, and shall review the list annually.

52 (6) Notwithstanding the investment limitations set forth
53 in this section, it is recognized that the assets managed by the
54 board may temporarily exceed the investment limitations in
55 this section due to market appreciation, depreciation and
56 rebalancing limitations. Accordingly, the limitations on
57 investments set forth in this section shall not be considered to
58 have been violated if the board rebalances the assets it
59 manages to comply with the limitations set forth in this
60 section at least once every twelve months based on the latest
61 available market information and any other reliable market
62 data that the board considers advisable to take into
63 consideration, except for those assets authorized by
64 subdivision (2) of this subsection for which compliance with
65 the percentage limitations shall be measured at such time as
66 the investment is made.

67 (7) The board shall annually review, establish and
68 modify, if necessary, the board's investment objectives and
69 investment policy so as to provide for the financial security
70 of the trust funds giving consideration to the following:

71 (A) Preservation of capital;

72 (B) Diversification;

73 (C) Risk tolerance;

74 (D) Rate of return;

75 (E) Stability;

76 (F) Turnover;

77 (G) Liquidity; and

78 (H) Reasonable cost of fees.

(8) The board is expressly prohibited from investing in any class, style or strategy of alternative investments including a private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt fund; hedge fund; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article;

(b) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and the evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices; and

(c) Each entity conducting business for each pension fund shall fully disclose all fees and costs of investing conducted on a quarterly basis to the trustees of the fund and to the oversight board. Entities conducting business in mutual funds for and on behalf of each pension fund shall timely file revised prospectus and normal quarterly and annual Securities and Exchange Commission reporting documents with the board of trustees of each pension fund.

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.

(a) All members applying for total and temporary or total and permanent disability benefits after June 30, 1981, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown, or West Virginia University, Charleston: *Provided,* That if a member's medical condition cannot be agreed on by the two physicians, a third physician shall examine the member: *Provided, however,* That beginning

9 January 1, 2010, and continuing thereafter, a member
10 applying for total and temporary or total and permanent
11 disability benefits shall be examined by two physicians, one
12 of which shall be chosen and paid by the member, and one of
13 which shall be chosen and paid by the oversight board. If the
14 two physicians disagree, the oversight board shall select and
15 pay for a third examining physician. Disability benefits shall
16 be awarded if in the opinion of two of the examining
17 physicians the member is by reason of the disability unable
18 to perform adequately the job duties required. Each medical
19 examination shall include the review of the member's
20 medical history, but an examining physician may not have
21 access to the disability examination report or disability
22 recommendation of another physician. The physicians shall
23 send copies of their reports to both the board of trustees of
24 the member's pension and relief fund and the oversight
25 board. The expense of the member's transportation to
26 medical examinations shall be paid by the board of trustees.
27 Medical expense shall not exceed the reasonable and
28 customary charges for similar services. Beginning January
29 1, 2010, and thereafter, if a member is charged with an
30 offense that has the potential to lead to the member's
31 termination, the member's municipal pensions and relief fund
32 board of trustees may not consider the member's eligibility
33 for disability benefits until after investigation of the charge is
34 completed and any disciplinary decision is implemented. No
35 later than January 1, 2011, and annually thereafter, each
36 board of trustees shall report to the oversight board the total
37 number of disability applications received during the prior
38 fiscal year, the status of each application as of the end of the
39 fiscal year, total applications granted and denied and the
40 percentage of disability-benefit recipients to the total number
41 of active members of the fund.

42 (b) Effective for members becoming eligible for total and
43 temporary disability benefits after June 30, 1981, initially or
44 previously under this subsection allowance for initial or

additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article shall be paid to the member during the disability for a period not exceeding twenty-six weeks if after a medical examination in accordance with subsection (a) of this section two examining physicians report in writing to the board of trustees that: (1) The member has become so totally, physically or mentally disabled, from any reason, as to render the member totally, physically or mentally, incapacitated for employment as a police officer or firefighter; and (2) it has not been determined if the disability is permanent or it has been determined that the disability may be alleviated or eliminated if the member follows a reasonable medical treatment plan or reasonable medical advice: *Provided,* That, in any event, a member is not eligible for total and temporary disability payments following the fourth consecutive 26-week period of total and temporary disability unless subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During the two-year period of total and temporary disability, the department is required to restore the member to his or her former position in the department at any time the member is determined to no longer be disabled: *Provided, however,* That the department may refill, on a temporary basis, the position vacated by s the member after the first twenty-six weeks of his or her temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after June 30, 1981, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to the member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that the member has become so totally,

physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if the member has been a member of either of the departments for a period of not less than five consecutive years preceding the disability, the member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during the disability not exceeding twenty-six weeks shall cease at the end of the 26-week period under the following conditions:

(1) The member fails to be examined as provided in subsection (a) of this section; or (2) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under subsection (b) of this section, subsequent to the member's receipt of total and temporary disability payments for a period of two years, the payments shall cease at the end of the two-year period under the following conditions: (A) The member fails to be

examined as provided in subsection (a) of this section; or (B) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (c) of this section.

(e) Notwithstanding other provisions of this section to the contrary, a member of a municipal policemen's or firemen's pension and relief fund who is found to be disabled from performing the full range of tasks relevant to police officer or firefighter employment but capable of performing a restricted or light-duty police officer or firefighter job made available at the discretion of the employing municipality may choose to continue working and retain an active membership in his or her pension and relief fund.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been or will be on qualified military service in the armed forces of the United States, has an honorable discharge from the armed forces, presents himself or herself for resumption of duty to his or her appointing municipal official within six months from his or her date of discharge and is accepted by two medical

examiners, at least one of which is appointed by the oversight board as being mentally and physically capable of performing the required duties as a member of the paid police or fire department, shall be given credit for continuous service in the paid police or fire department. The six-month period in which a member has to resume employment and receive credit for continuous service is extended to a period not to exceed two years if the member has been hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, qualified military service. No member of a paid police or fire department shall be required to pay the monthly assessment during a period of qualified military service. However, a member who desires to make up member assessments, in whole or in part, has five years from the date of return to work, but shall not be required to pay any interest or other charges for the assessments being made up. The employer must pay the employer contributions for the periods made up by the member within ninety days of each payment, or within ninety days of the normal due date. A member who resumes duty with a paid police or fire department after qualified military service is entitled to accrued benefits only to the extent that the member made up the member assessments.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of the pension benefits:

(1) A former member who on June 30, 1962, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July 1, 1985, the pension benefits shall be no less than the amount of $500 per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July 1, 1962, shall continue to receive pension benefits, but on and after July 1, 1985, shall receive the disability pension benefits, or retirement pension benefits provided in section twenty-four or twenty-five of this article, as the case may be.

(c) As to any surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of such death benefits:

(1) A surviving spouse, dependent child or children or dependent father or mother, or dependent brothers or sisters, of any former member, who on June 30, 1962, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits, but on and after July 1, 1985, the death benefits shall be no less than the following amounts: To a surviving spouse, until death or remarriage, the sum of $300 per month; to each dependent child the sum of $30 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, the sum of $45 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent father and mother the sum of $30 per month for each; to each dependent brother or sister, the sum of $50 per month, until the individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to the brothers and sisters exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive a pro rata share of the payments. In no case shall the payments to the

86 surviving spouse and children be cut below sixty-five percent
87 of the total amount paid to all dependents; and

88 (2) A surviving spouse, dependent child or children, or
89 dependent father or mother, or dependent brothers or sisters,
90 of any former member who became eligible for death
91 benefits on or after July 1, 1962, shall continue to receive
92 death benefits, but on and after July 1, 1985, shall receive the
93 death benefits provided in section twenty-six of this article.

94 (d) A former member who is receiving disability pension
95 benefits on July 1, 1985, shall continue to receive disability
96 pension benefits provided in section twenty-four of this
97 article.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-1. Title.
§8-22A-2. Definitions.
§8-22A-3. Meaning of terms.
§8-22A-4. Creation and administration of West Virginia Municipal Police Officers and Firefighters Retirement System; specification of actuarial assumptions.
§8-22A-5. Article to be liberally construed; board to administer plan; federal qualification requirements.
§8-22A-6. Members.
§8-22A-7. Creation of fund; investments; actuarial valuations.
§8-22A-8. Members' contributions; employer contributions; correction of errors.
§8-22A-9. Retirement; commencement of benefits; insurance requirements during early period.
§8-22A-10. Federal law maximum benefit limitations.
§8-22A-11. Federal law minimum required distributions.
§8-22A-12. Direct rollovers.
§8-22A-13. Rollovers and transfers to repay withdrawn contributions.
§8-22A-14. Retirement benefits.
§8-22A-15. Annuity options.
§8-22A-16. Refunds to certain members on discharge or resignation; deferred retirement; forfeitures.
§8-22A-17. Awards and benefits for disability – Duty related; exception during early period.
§8-22A-18. Awards and benefits for disability – Due to other causes; exception during early period.
§8-22A-19. Same – Physical examinations; recertification; termination of disability.
§8-22A-20. Awards and benefits to surviving spouse -- When member dies in performance of duty, etc.; exception during early period.

§8-22A-21. Awards and benefits to surviving spouse – When member dies from nonservice-connected causes.
§8-22A-22. Additional death benefits and scholarships – Dependent children.
§8-22A-23. Burial benefit.
§8-22A-24. Double death benefits prohibited.
§8-22A-25. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.
§8-22A-26. Fraud; penalties; and repayment.
§8-22A-27. Credit toward retirement for member's military service; qualified military service.
§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.
§8-22A-29. Effective date; special starting date for benefits; provisions governing health care benefits for retirees age fifty to fifty-five.
§8-22A-30. Limitation of employer liability.
§8-22A-31. Benefits not forfeited if system terminates.
§8-22A-32. Membership retroactive in certain circumstances.

§8-22A-1. Title.

1 This article is known and may be cited as the West
2 Virginia Municipal Police Officers and Firefighters
3 Retirement System Act.

§8-22A-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 ten of this
12 article.

13 (b) "Accumulated contributions" means the sum of all
14 retirement contributions deducted from the compensation of

15 a member, or paid on his or her behalf as a result of covered
16 employment, together with regular interest on the deducted
17 amounts.

18 (c) "Active military duty" means full-time duty in the
19 active military service of the United States Army, Navy, Air
20 Force, Coast Guard or Marine Corps. The term does not
21 include regularly required training or other duty performed
22 by a member of a reserve component or National Guard
23 unless the member can substantiate that he or she was called
24 into the full-time active military service of the United States
25 and has received no compensation during the period of that
26 duty from any board or employer other than the armed forces.

27 (d) "Actuarial equivalent" means a benefit of equal value
28 computed on the basis of the mortality table and interest rates
29 as set and adopted by the board in accordance with the
30 provisions of this article*: Provided,* That when used in the
31 context of compliance with the federal maximum benefit
32 requirements of Section 415 of the Internal Revenue Code,
33 "actuarial equivalent" shall be computed using the mortality
34 tables and interest rates required to comply with those
35 requirements.

36 (e) "Annual compensation" means the wages paid to the
37 member during covered employment within the meaning of
38 Section 3401(a) of the Internal Revenue Code, but
39 determined without regard to any rules that limit the
40 remuneration included in wages based on the nature or
41 location of employment or services performed during the
42 plan year plus amounts excluded under Section 414(h)(2) of
43 the Internal Revenue Code and less reimbursements or other
44 expense allowances, cash or noncash fringe benefits or both,
45 deferred compensation and welfare benefits. Annual
46 compensation for determining benefits during any
47 determination period may not exceed the maximum
48 compensation allowed as adjusted for cost-of-living in

accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17)of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for "retirement" on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided,* That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in section eight of this article.

(j) "Credited service" means the sum of a member's years of service, active military duty and disability service.

(k) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(l) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(m) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or

both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(n) "Effective date" means January 1, 2010.

(o)(1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in section sixteen, article twenty-two of this chapter. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in section sixteen, article twenty-two of this chapter. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(p) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability

benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(q) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.

(r) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(s) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section seventeen or eighteen of this article; and

170 (3) Each hour for which back pay is either awarded or
171 agreed to be paid by the employing municipality, irrespective
172 of mitigation of damages. The same hours of service shall
173 not be credited both under subdivision (1) or (2) of this
174 subsection and under this subdivision. Hours under this
175 paragraph shall be credited to the member for the plan year
176 or years to which the award or agreement pertains, rather
177 than the plan year in which the award, agreement or payment
178 is made.

179 (t) "Member" means, except as provided in section thirty-
180 two of this article, a person first hired as a municipal police
181 officer or municipal firefighter, as defined in this section, by
182 a participating municipal employer on or after January 1,
183 2010. A member shall remain a member until the benefits to
184 which he or she is entitled under this article are paid or
185 forfeited.

186 (u) "Monthly salary" means the W-2 reportable
187 compensation received by a member during the month.

188 (v) "Municipality" has the meaning ascribed to it in this
189 code.

190 (w) "Municipal subdivision" means any separate
191 corporation or instrumentality established by one or more
192 municipalities, as permitted by law; and any public
193 corporation charged by law with the performance of a
194 governmental function and whose jurisdiction is coextensive
195 with one or more municipalities.

196 (x) "Normal form" means a monthly annuity which is one
197 twelfth of the amount of the member's accrued benefit which
198 is payable for the member's life. If the member dies before
199 the sum of the payments he or she receives equals his or her
200 accumulated contributions on the annuity starting date, the
201 named beneficiary shall receive in one lump sum the

difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service;

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or

(4) Attainment of age sixty-two years and completion of five or more years of regular contributory service.

(z) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(aa) "Plan year" means the twelve-month period commencing on January 1 of any designated year and ending the following December 31.

(bb) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(cc) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ee) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ff) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(gg) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(hh) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(ii) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also

cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(jj) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period

292 during which he or she received disability payments under
293 section seventeen or eighteen of this article.

§8-22A-3. Meaning of terms.

1 Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States, unless a different meaning is clearly required. Any
4 reference in this article to the Internal Revenue Code means
5 the Internal Revenue Code of 1986, as amended.

§8-22A-4. Creation and administration of West Virginia Municipal Police Officers and Firefighters Retirement System; specification of actuarial assumptions.

1 There is hereby created the West Virginia Municipal
2 Police Officers and Firefighters Retirement System. The
3 purpose of this system is to provide for the orderly retirement
4 of certain police officers and firefighters who become
5 superannuated because of age or permanent disability and to
6 provide certain survivor death benefits. Substantially all of
7 the members of the retirement system shall be qualified
8 public safety employees as defined in section two of this
9 article. The retirement system shall come into effect January
10 1, 2010: *Provided,* That if the number of members in the
11 system are fewer than one hundred on January 1, 2014, then
12 all of the provisions of this article are void and of no force
13 and effect, and memberships in the system will be merged
14 into the Emergency Medical Services Retirement System
15 created in article five-v, chapter sixteen of this code. If
16 merger is required, the board shall take all necessary steps to
17 see that the voluntary transfers of persons and assets
18 authorized by this article do not affect the qualified status
19 with the Internal Revenue Service of either retirement plan.
20 All business of the system shall be transacted in the name of
21 the West Virginia Municipal Police Officers and Firefighters

22 Retirement System. The board shall specify and adopt all
23 actuarial assumptions for the plan at its first meeting of every
24 calendar year or as soon thereafter as may be practicable,
25 which assumptions shall become part of the plan.

§8-22A-5. Article to be liberally construed; board to administer plan; federal qualification requirements.

1 (a) The provisions of this article shall be liberally
2 construed so as to provide a general retirement system for
3 municipal police officers and firefighters eligible to retire
4 under the provisions of this plan.

5 (b) The board shall administer the plan in accordance
6 with its terms and may construe the terms and determine all
7 questions arising in connection with the administration,
8 interpretation and application of the plan. The board may sue
9 and be sued, contract and be contracted with and conduct all
10 the business of the system in the name of the plan. The board
11 may employ those persons it considers necessary or desirable
12 to administer the plan. The board shall administer the plan
13 for the exclusive benefit of the members and their
14 beneficiaries subject to the specific provisions of the plan.

15 (c) The plan is intended to meet the federal qualification
16 requirements of Section 401(a) and related sections of the
17 Internal Revenue Code as applicable to governmental plans.
18 Notwithstanding any other provision of state law, the board
19 shall administer the plan to fulfill this intent for the exclusive
20 benefit of the members and their beneficiaries. Any
21 provision of this article referencing or relating to these
22 federal qualification requirements is effective as of the date
23 required by federal law. The board may propose rules for
24 promulgation and amend or repeal conflicting rules in
25 accordance with the authority granted to the board pursuant
26 to section one, article ten-d, chapter five of this code to
27 assure compliance with the requirements of this section.

§8-22A-6. Members.

(a) A police officer or firefighter first employed in covered employment after the effective date of this article by a municipality or municipal subdivision which has established and maintained a policemen's pension and relief fund or a firemen's pension and relief fund pursuant to section sixteen, article twenty-two of this chapter and which is a participating employer, shall be a member of this retirement plan.

(b) Except as provided in section thirty-two of this article, a police officer or firefighter who is a member of the Municipal Police Officers and Firefighters Retirement System may not have credit for covered employment in any other retirement system applied as service credit in the Municipal Police Officers and Firefighters Retirement System.

(c) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§8-22A-7. Creation of fund; investments; actuarial valuations.

(a) There is hereby created the West Virginia Municipal Police Officers and Firefighters Retirement Fund for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except amounts designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the Consolidated Pensions Fund administered by the West Virginia Investment Management Board as provided by law.

(c) The board shall employ a competent actuary or actuarial firm to prepare an actuarial valuation of the assets and liabilities of the fund. The actuarial valuation period shall coincide with the fiscal year of the state.

§8-22A-8. Members' contributions; employer contributions; correction of errors.

(a)(1) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent (or ten and one-half percent, if applicable) of his or her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal subdivision in which the member is employed in covered employment in an amount determined by the board: *Provided,* That in no year may the total of the employer contributions provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of the total payroll for the members in the employ of the municipality or municipal subdivision. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent (or ten and one-half percent, if applicable) of his or her monthly salary earned as a municipal police officer or firefighter as well as the sum of eight and one-half percent (or ten and one-half percent, if applicable)

of his or her monthly salary earned from any additional employment which additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount as determined by the board, not to exceed ten and one-half percent of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which the member is employed.

(2) The board may, on the recommendation of the board's actuary, increase the employees' contribution rate from eight and one-half percent to ten and one-half percent should the plan not be seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and one-half percent on July 1 following the acceptance by the board of an actuarial valuation determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial valuation date falls below seventy percent, the employee rate of contribution shall be increased to ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The board shall change the employee contribution rate on July 1 following the board's acceptance of the actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer contribution.

(b) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board on the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any municipality or municipal subdivision which fails to make any payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day following

the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is $50.

(c) If any change or employer error in the records of any participating public employer or the retirement system results in any member or retirant receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member or retirant was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 (retirement board reinstatement interest) and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

§8-22A-9. Retirement; commencement of benefits; insurance requirements during early period.

(a) To ensure the fiscal integrity of the retirement system during the start-up phase, no member is entitled to retirement, disability or death benefits under this retirement system until January 1, 2013. Participating municipalities shall purchase insurance for their new plan members to provide coverage in an amount equal to disability coverage otherwise provided in sections seventeen and eighteen of this article and death benefits otherwise provided in sections twenty, twenty-two and twenty-three of this article for claims arising before January 1, 2013.

(b) A member may retire and commence to receive retirement income payments on the first day of the calendar month following written application for his or her voluntary petition for retirement coincident with or next following the later of the date the member ceases employment, or the date the member attains early or normal retirement age, in an amount as provided under this article: *Provided,* That retirement income payments under this plan are subject to the provisions of this article. On receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and on receipt of properly executed forms from the member, the board shall process a member's request for and commence payments as soon as administratively feasible.

§8-22A-10. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or

10 limited if necessary to an amount which does not exceed
11 those limitations. The extent to which any annuity or other
12 annual benefit payable under this retirement system shall be
13 reduced as compared with the extent to which an annuity,
14 contributions or other benefits under any other defined
15 benefit plans or defined contribution plans required to be
16 taken into consideration under Section 415 of the Internal
17 Revenue Code shall be reduced, shall be proportional on a
18 percentage basis to the reductions made in such other plans
19 required to be so taken into consideration under Section 415,
20 unless a disproportionate reduction is determined by the
21 board to maximize the aggregate benefits payable to the
22 member. If the reduction is under this retirement system, the
23 board shall advise affected members of any additional
24 limitation on the annuities or other annual benefit required by
25 this section. The 415 limitations are incorporated herein by
26 reference, except to the extent the following provisions may
27 modify the default provisions thereunder:

28 (a) A member's annual benefit payable in any limitation
29 year from this retirement system shall in no event be greater
30 than the limit applicable at the annuity starting date, as
31 increased in subsequent years pursuant to Section 415(d) of
32 the Internal Revenue Code and the regulations thereunder.

33 (b) For purposes of this section, the "annual benefit"
34 means a benefit that is payable annually in the form of a
35 straight life annuity. Except as provided below, where a
36 benefit is payable in a form other than a straight life annuity,
37 the benefit shall be adjusted to an actuarially equivalent
38 straight life annuity that begins at the same time as such other
39 form of benefit, using factors prescribed in the 415 limitation
40 regulations, before applying the 415 limitations. No actuarial
41 adjustment to the benefit shall be made for: (1) Survivor
42 benefits payable to a surviving spouse under a qualified joint
43 and survivor annuity to the extent such benefits would not be
44 payable if the member's benefit were paid in another form;

(2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) *Adjustment for benefit forms not subject to Section 417(e)(3).* -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the

same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) *Adjustment for benefit forms subject to Section 417(e)(3).* -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subsection (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and one-half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling

118 modifying the applicable provisions of Revenue Ruling
119 2001-62), divided by 1.05.

120 (e) *Benefits payable prior to age sixty-two.* -- (1) Except
121 as provided in subdivisions (2) and (3) of this subsection, if
122 the member's retirement benefits become payable before age
123 sixty-two, the 415 dollar limitation prescribed by this section
124 shall be reduced in accordance with regulations issued by the
125 Secretary of the Treasury pursuant to the provisions of
126 Section 415(b) of the Internal Revenue Code, so that the
127 limitation (as so reduced) equals an annual straight life
128 benefit (when the retirement income benefit begins) which is
129 equivalent to an annual benefit in the amount of the
130 applicable dollar limitation of Section 415(b)(1)(A) of the
131 Internal Revenue Code (as adjusted pursuant to Section
132 415(d) of the Internal Revenue Code) beginning at age sixty-
133 two.

134 (2) The limitation reduction provided in subdivision (1)
135 of this subsection shall not apply if the member commencing
136 retirement benefits before age sixty-two is a qualified
137 participant. A qualified participant for this purpose is a
138 participant in a defined benefit plan maintained by a state, or
139 any political subdivision of a state, with respect to whom the
140 service taken into account in determining the amount of the
141 benefit under the defined benefit plan includes at least fifteen
142 years of service: (i) As a full-time employee of any police or
143 fire department organized and operated by the state or
144 political subdivision maintaining the defined benefit plan to
145 provide police protection, fire-fighting services or emergency
146 medical services for any area within the jurisdiction of such
147 state or political subdivision; or (ii) as a member of the armed
148 forces of the United States.

149 (3) The limitation reduction provided in subdivision (1)
150 of this subsection shall not be applicable to preretirement
151 disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five, no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) *Adjustment when member has less than ten years of participation.* -- In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subsection (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or 1, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

§8-22A-11. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and its regulations. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section

15 401(a)(9) of the Internal Revenue Code, over the life of the
16 member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent on, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the plan has been distributed, then the
25 remaining portion of that interest shall be distributed at least
26 as rapidly as under the method of distribution being used at
27 the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the plan shall be
30 distributed by December 31 of the calendar year containing
31 the fifth anniversary of the member's death, except as
32 follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary or
35 over a period certain not greater than the life expectancy of
36 the beneficiary, commencing on or before December 31 of
37 the calendar year immediately following the calendar year in
38 which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no later
41 than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or (ii)

46 December 31 of the calendar year following the calendar year
47 in which the spouse died.

§8-22A-12. Direct rollovers.

1 Notwithstanding any provision of this article to the
2 contrary that would otherwise limit a distributee's election
3 under this plan, a distributee may elect, at the time and in the
4 manner prescribed by the board, to have any portion of an
5 eligible rollover distribution paid directly to an eligible
6 retirement plan specified by the distributee in a direct
7 rollover. For purposes of this section, the following
8 definitions apply:

9 (1) "Eligible rollover distribution" means any distribution
10 of all or any portion of the balance to the credit of the
11 distributee, except that an eligible rollover distribution does
12 not include any of the following: (A) Any distribution that is
13 one of a series of substantially equal periodic payments not
14 less frequently than annually made for the life or life
15 expectancy of the distributee or the joint lives or the joint life
16 expectancies of the distributee and the distributee's
17 designated beneficiary, or for a specified period of ten years
18 or more; (B) any distribution to the extent the distribution is
19 required under Section 401(a)(9) of the Internal Revenue
20 Code; and (C) any hardship distribution described in Section
21 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion
22 of a distribution shall not fail to be an eligible rollover
23 distribution merely because the portion consists of after-tax
24 employee contributions which are not includable in gross
25 income. However, this portion may be paid only to an
26 individual retirement account or annuity described in Section
27 408(a) or (b) of the Internal Revenue Code, or to a qualified
28 trust described in Section 401(a) or to an annuity contract
29 described in Section 403(a) or 403(b) of the Internal Revenue
30 Code that agrees to separately account for amounts
31 transferred (including interest or earnings thereon), including

separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this plan, an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: *Provided,* That in the case of an eligible rollover distribution to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. The term "distributee" also includes a designated beneficiary (other than a surviving spouse) as the term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan.

§8-22A-13. Rollovers and transfers to repay withdrawn contributions.

(a) Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (1) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (2) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (3) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (4) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided,* That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this section, "repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required

pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§8-22A-14. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based on the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit limitations of Section 415 of the Internal Revenue Code and section ten of this article. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) *Normal retirement.* -- A member whose annuity starting date is the date the member attains normal retirement

age is entitled to his or her accrued benefit without adjustment for age at commencement.

(b) *Late retirement.* -- A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form without adjustment for age at commencement, which is the benefit to which he or she is entitled according to his or her accrued benefit based on his or her final average salary and credited service at the time of his or her actual retirement and following the completion of an application for retirement as required by the board.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

§8-22A-15. Annuity options.

Prior to the effective date of retirement, but not after that date, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) *Option A -- Contingent joint and survivor annuity.* -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member's life. On the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred

12 percent of the amount paid while both were living, as elected
13 by the member. If the beneficiary dies first, the monthly
14 amount of benefits may not be reduced, but shall be paid at
15 the amount that was in effect before the death of the
16 beneficiary. If the retiring member is married, the spouse
17 shall sign a waiver of benefit rights if the beneficiary is to be
18 other than the spouse.

19 (b) *Option B -- Ten years certain and life annuity.* -- A
20 life annuity payable during the member's lifetime but in any
21 event for a minimum of ten years. If the member dies before
22 the expiration of ten years, the remaining payments shall be
23 made to a designated beneficiary, if any, or otherwise to the
24 member's estate.

§8-22A-16. Refunds to certain members on 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, on withdrawal, the member shall forfeit his or her
7 accrued benefit and cease to be a member.

8 (b)(1) 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 accumulated
12 contributions withdrawn from the plan unless following his
13 or her return to covered employment and active participation
14 in this plan, the member redeposits in the fund the amount of
15 the accumulated contributions withdrawn from previous
16 covered employment, together with interest on the
17 accumulated contributions at the rate determined by the board
18 from the date of withdrawal to the date of redeposit. On

repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

(2) The repayment authorized by this subsection shall be made in a lump sum within sixty months of the police officer's or firefighter's reemployment in covered employment.

(c) Every member who completes sixty months of regular contributory service may, on cessation of covered employment, either withdraw his or her accumulated contributions in accordance with this section or choose not to withdraw his or her accumulated contribution and receive retirement income payments, if eligible, on attaining normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

§8-22A-17. Awards and benefits for disability -- Duty related; exception during early period.

(a) Except as provided in subsection (a), section nine of this article, any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing police officer or firefighter functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, the member is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering

his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation under this section. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(b) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month period preceding the member's disability or the shorter period if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided in sections fourteen and fifteen of this article.

§8-22A-18. Awards and benefits for disability -- Due to other causes; exception during early period.

(a) Except as provided in subsection (a), section nine of this article, any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled from any cause other than those set forth in section seventeen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, he or she is by reason of the disability not only unable to perform his or her previous work as a police officer

11 or firefighter but also cannot, considering his or her age,
12 education and work experience, engage in any other kind of
13 substantial gainful employment which exists in the state
14 regardless of whether: (A) The work exists in the immediate
15 area in which the member lives; (B) a specific job vacancy
16 exists; or (C) the member would be hired if he or she applied
17 for work, is entitled to receive and shall be paid from the
18 fund in monthly installments during the lifetime of the
19 member or, if sooner, until the member attains normal
20 retirement age or until the disability sooner terminates, the
21 compensation set forth in, either subsection (b) or (c) of this
22 section.

23 (b) If the member is totally disabled, he or she shall
24 receive sixty-six and two-thirds percent of his or her average
25 monthly compensation for the twelve-month period
26 preceding the disability, or the shorter period, if the member
27 has not worked twelve months.

28 (c) If the member remains totally disabled until attaining
29 sixty years of age, then the member shall receive the
30 retirement benefit provided in sections fourteen and fifteen of
31 this article.

§8-22A-19. Same -- Physical examinations; recertification; termination of disability.

1 The board may require any member who has applied for
2 or is receiving disability benefits under this article to submit
3 to a physical examination, mental examination or both, by a
4 physician or physicians selected or approved by the board
5 and may cause all costs incident to the examination and
6 approved by the board to be paid from the fund. The costs
7 may include hospital, laboratory, X-ray, medical and
8 physicians' fees. A report of the findings of any physician
9 shall be submitted in writing to the board for its
10 consideration. If, from the report, independent information,

or from the report and any hearing on the report, the board finds that the member is no longer totally disabled and is engaged in or is able to engage in substantial gainful employment, then the disability benefits shall cease. The board shall require recertification annually for the first three years of disability and thereafter at the discretion of the board. For purposes of recertification the board may require a disability retirant to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retirant's physician certifying continued disability, and may require the retirant to submit copies of annual income tax returns. If a retirant refuses to submit to medical examinations or to provide statements or returns requested for recertification, the board may discontinue disability until the retirant complies.

§8-22A-20. Awards and benefits to surviving spouse -- When member dies in performance of duty, etc.; exception during early period.

(a) Except as provided in subsection (a), section nine of this article, the surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a police officer or firefighter, or the surviving spouse of a member who dies from any cause while receiving benefits pursuant to section seventeen of this article, is entitled to receive and shall be paid from the fund benefits as determined in this section. To the surviving spouse annually, in equal monthly installments during his or her lifetime, an amount equal to the greater of: (1) Two thirds of the annual compensation received in the preceding twelve-month period by the deceased member; or (2) if the member dies after his

or her normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, section twenty-two and section twenty-three of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based on the member's covered employment.

§8-22A-21. Awards and benefits to surviving spouse -- When member dies from nonservice-connected causes.

(a) If a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section twenty of this article and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One-half of the annual compensation received in the preceding twelve-month employment period by the deceased member; or (2) if the member dies after his or her normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. If the member is receiving disability benefits under this article at the time of his or her death, the amount of the average monthly compensation which the member was receiving in the plan year prior to the initial disability shall be substituted for the annual compensation in subdivision (1) of this subsection.

(b) Benefits for a surviving spouse received under this section, or other sections of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based on the member's covered employment.

§8-22A-22. Additional death benefits and scholarships -- Dependent children.

(a) Except as provided in subsection (a), section nine of this article, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided,* That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further,* That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $6,000 per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

§8-22A-23. Burial benefit.

Except as provided in subsection (a), section nine of this article, any member who dies as a result of any service-related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both.

§8-22A-24. Double death benefits prohibited.

A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any

spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.

§8-22A-25. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.

The right of a person to any benefit provided in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: *Provided,* That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: *Provided, however,* That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The assets of the retirement system are exempt from state, county and municipal taxes.

§8-22A-26. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement system in any attempt to defraud that system is guilty of a misdemeanor and, on conviction thereof, shall be

punished by a fine not to exceed $1,000, by confinement in jail not to exceed one year, or by both fine and confinement. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund on demand by the board.

§8-22A-27. Credit toward retirement for member's military service; qualified military service.

(a) Each member shall receive months of credited service for months served in active military duty not to exceed twenty-four months: *Provided,* That any employee may purchase as much as an additional twelve months of service for time served in active military duty that otherwise has not been credited, by paying the actuarial reserve lump sum purchase amount within three years after becoming vested.

(b) "Actuarial reserve lump sum purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit. The purchase annuity rate is the actuarial lump sum annuity factor calculated on a monthly basis based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1983 group annuity mortality table, male rates, applied on a unisex basis to all members; if purchase age is under age fifty, a deferred annuity factor with payments commencing at age fifty; and if purchase age is fifty or over, an immediate annuity factor with payments starting at the purchase age. The purchase accrued benefit is two and three-fourths percent times the purchase military service times the purchase average monthly salary. The purchase military service is the amount of military service being purchased by the employee as a fraction of a year up to a one year maximum. The purchase average monthly salary is the final average monthly salary of the employee at the beginning of the month which is three months prior to the purchase month as if the employee terminated employment on that date. The purchase month is

the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service being purchased. The purchase age is the attained age of the employee in years and completed months as of the first day of the purchase month.

(c) Members who are eligible to receive credited service for periods of active military duty must substantiate to the retirement board:

(1) That the member has served one or more periods of active duty as substantiated by a federal form DD-214;

(2) That the member has been honorably discharged from active military duty as substantiated by a federal form DD-214; and

(3) That the member is receiving no benefits from any other governmental retirement system, except those benefits provided by federal law, for his or her active military duty.

(d) Any service credit allowed under this section may be credited one time only for each municipal police officer or municipal firefighter, regardless of any changes in job title or responsibilities.

(e) Notwithstanding any provision of this section to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and

service credit to comply with Section 414(u) of the Internal Revenue Code.

(f) Any contribution under this section to purchase service for time served in active military duty must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code to the extent it is considered permissive service credit, and shall be automatically reduced, limited, or required to be paid over multiple years (consistent with the time limits under this section for making such contributions) if necessary to ensure such compliance. To the extent the purchased service is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to the purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(g) The retirement board may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

(h) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.

(a) Subject to section sixteen, article twenty-two of this chapter, any municipality or municipal subdivision

employing municipal police officers or firefighters may by a majority of the members of its governing body eligible to vote, elect to become a participating public employer and thereby include its police officers and firefighters in the membership of the plan. The clerk or secretary of each municipality or municipal subdivision electing to become a participating public employer shall certify the determination of the municipality or municipal subdivision by corporate resolution to the Consolidated Public Retirement Board within ten days from and after the vote of the governing body. Separate resolutions are required for municipal police officers and municipal firefighters. Once a municipality or municipal subdivision elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.

(b) After April 1, 2010, and before July 1, 2010, the participating employers shall jointly submit a plan to the State Auditor, pursuant to section five, article seven, chapter five of this code, to extend Social Security benefits to members of the retirement system.

§8-22A-29. Effective date; special starting date for benefits; provisions governing health care benefits for retirees age fifty to fifty-five.

(a) The effective date of this article is January 1, 2010. No payout of any benefits may be made by the retirement system to any person prior to January 1, 2013, except as provided in subsection (a), section nine of this article.

(b) The Director of the Public Employees Insurance Agency shall include in the insurance plan document filed in the office of the Secretary of State as 151 CSR 1 provisions governing health insurance benefits for retirees under the plan who are enrolled by their employers in insurance provided by the Public Employees Insurance Agency.

§8-22A-30. Limitation of employer liability.

1 No municipality or municipal subdivision which has
2 timely met all of its obligations under this article is liable for
3 any payments or contributions to the retirement plan which
4 are owed to the plan by another participating employer.

§8-22A-31. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are
2 completely discontinued, the rights of all members to benefits
3 accrued or contributions made to the date of the termination
4 or discontinuance, to the extent then funded, are not forfeited.

§8-22A-32. Membership retroactive in certain circumstances.

1 Notwithstanding all other provisions relating to this
2 article and article twenty-two of this chapter, any police
3 officer or firefighter hired by a participating public employer
4 on or after June 1, 2009, and before January 1, 2010, who
5 received notice at the time of employment that he or she may
6 be placed in a new retirement system created by legislation
7 and who has been enrolled in but received no benefits from
8 a municipal policemen's or firemen's pension and relief fund
9 shall, if permitted by applicable federal law, be enrolled in
10 the Municipal Police Officers and Firefighters Retirement
11 System upon acceptance by the Consolidated Public
12 Retirement Board of the resolution of the municipality
13 required by section twenty-eight of this article. Employee
14 and employer contributions made by or on behalf of the
15 employee to the municipal pension and relief fund pursuant
16 to article twenty-two of this chapter shall be transferred
17 within sixty days to the retirement system created in this
18 article and the employee subject to the transfer shall receive
19 service credit for time worked while a member of the
20 municipal pension and relief fund.

CHAPTER 33. INSURANCE.

Article
3. Licensing, Fees and Taxation of Insurers.
12C. Surplus Line.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) (1) For the purpose of providing additional revenue
2 for municipal policemen's and firemen's pension and relief
3 funds and the Teachers Retirement System Reserve Fund and
4 for volunteer and part-volunteer fire companies and
5 departments, there is hereby levied and imposed an additional
6 premium tax equal to one percent of taxable premiums for
7 fire insurance and casualty insurance policies. For purposes
8 of this section, casualty insurance does not include insurance
9 on the life of a debtor pursuant to or in connection with a
10 specific loan or other credit transaction or insurance on a
11 debtor to provide indemnity for payments becoming due on
12 a specific loan or other credit transaction while the debtor is
13 disabled as defined in the policy.

14 (2) All moneys collected from this additional tax shall be
15 received by the commissioner and paid by him or her into a
16 special account in the State Treasury, designated the
17 Municipal Pensions and Protection Fund: *Provided,* That on
18 or after January 1, 2010, the commissioner shall pay ten
19 percent of the amount collected to the Teachers Retirement
20 System Reserve Fund created in section eighteen, article
21 seven-a, chapter eighteen of this code, twenty-five percent of
22 the amount collected to the Fire Protection Fund created in
23 section thirty-three of this article for allocation by the
24 Treasurer to volunteer and part-volunteer fire companies and
25 departments and sixty-five percent of the amount collected to

the Municipal Pensions and Protection Fund: *Provided, however,* That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of section eighteen-b, article twenty-two, chapter eight of this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, sixty-five percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in section eighteen-b, article twenty-two, chapter eight of this code. The net proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to subsection (d), section eighteen-a, article twenty-two, chapter eight of this code.

(b) (1) Before the first day of August of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the State Treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year: *Provided,* That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in section eighteen-a, article twenty-two, chapter eight of this code. These reports received by the oversight board shall be provided annually to the State Treasurer by September 1.

(2) Before the first day of September of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this

section. Before the first day of September of each calendar year and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to section eighteen-b, article twenty-two, chapter eight of this code, the Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c)(1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys

collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least one hundred hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.

129 (d) The allocation and distribution of revenues provided
130 for in this section are subject to the provisions of section
131 twenty, article twenty-two, and sections eight-a and eight-b,
132 article fifteen, chapter eight of this code.

ARTICLE 12C. SURPLUS LINE.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums
2 charged by the insurer for the insurance, every person
3 licensed pursuant to section eight of this article shall collect
4 and pay to the commissioner a sum equal to four percent of
5 the gross premiums and gross fees charged, less any return
6 premiums, for surplus lines insurance provided by the
7 licensee pursuant to the license. Where the insurance covers
8 properties, risks or exposures located or to be performed both
9 in and out of this state, the sum payable shall be computed on
10 that portion of the gross premiums allocated to this state
11 pursuant to subsection (g) of this section less the amount of
12 gross premiums allocated to this state and returned to the
13 insured due to cancellation of policy. The tax on any portion
14 of the premium unearned at termination of insurance having
15 been credited by the state to the licensee shall be returned to
16 the policyholder directly by the surplus lines licensee or
17 through the producing broker, if any.

18 (b) The individual insurance producer may not:

19 (1) Pay directly or indirectly the tax or any portion
20 thereof, either as an inducement to the policyholder to
21 purchase the insurance or for any other reason; or

22 (2) Rebate all or part of the tax or the surplus lines
23 licensee's commission, either as an inducement to the
24 policyholder to purchase the insurance or for any reason.

(c) The surplus lines licensee may charge the prospective policyholder a fee for the cost of underwriting, issuing, processing, inspecting, service or auditing the policy for placement with the surplus lines insurer if:

(1) The service is required by the surplus lines insurer;

(2) The service is actually provided by the individual insurance producer or the cost of the service is actually incurred by the surplus lines licensee; and

(3) The provision or cost of the service is reasonable, documented and verifiable.

(d) The surplus lines licensee shall make a clear and conspicuous written disclosure to the policyholder of:

(1) The total amount of premium for the policy;

(2) Any fee charged;

(3) The total amount of any fee charged; and

(4) The total amount of tax on the premium and fee.

(e) The clear and conspicuous written disclosure required by subdivision (4) of this subsection is subject to the record maintenance requirements of section eight of this article.

(f) This tax is imposed for the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part-volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth

quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before March 1 of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.

All taxes remitted to the commissioner pursuant to this subsection shall be paid by him or her into a special account in the State Treasury, designated Municipal Pensions and Protection Fund, or pursuant to section eighteen-b, article twenty-two, chapter eight of this code, the Municipal Pensions Security Fund, and after appropriation by the Legislature, shall be distributed in accordance with the provisions of subsection (c), section fourteen-d, article three of this chapter. The surplus lines licensee shall return to the policyholder the tax on any unearned portion of the premium returned to the policyholder because of cancellation of policy.

(g) If a surplus lines policy procured through a surplus lines licensee covers properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be considered written on properties, risks or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state. In no event shall the tax payable to this state be less than the tax due pursuant to subsection (h) of this section;

87 provided, however, in the event that the amount of tax due
88 under this provision is less than $50 in any jurisdiction, it
89 shall be payable in the jurisdiction in which the affidavit
90 required in section eleven is filed. The commissioner may,
91 at least annually furnish to the commissioner of a reciprocal
92 state, as defined in subsection (q), section three of this article,
93 a copy of all filings reporting an allocation of taxes as
94 required by this subsection.

95 (h) In determining the amount of gross premiums taxable
96 in this state for a placement of surplus lines insurance
97 covering properties, risks or exposures only partially located
98 or to be performed in this state, the tax due shall be computed
99 on the portions of the premiums which are attributable to
100 properties, risks or exposures located or to be performed in
101 this state and which relates to the kinds of insurance being
102 placed as determined by reference to the model allocation
103 schedule and reporting form.

104 (1) If a policy covers more than one classification:

105 (A) For any portion of the coverage identified by a
106 classification on the allocation schedule, the tax shall be
107 computed by using the allocation schedule for the
108 corresponding portion of the premium;

109 (B) For any portion of the coverage not identified by a
110 classification on the allocation schedule, the tax shall be
111 computed by using an alternative equitable method of
112 allocation for the property or risk;

113 (C) For any portion of the coverage where the premium
114 is indivisible, the tax shall be computed by using the method
115 of allocation which pertains to the classification describing
116 the predominant coverage.

117 (2) If the information provided by the surplus lines
118 licensee is insufficient to substantiate the method of

allocation used by the surplus lines licensee, or if the commissioner determines that the licensee's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:

(A) By use of the allocation schedule where the risk is appropriately identified in the schedule;

(B) Where the allocation schedule does not identify a classification appropriate to the coverage, the commissioner may give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.

(i) Collection of tax.

If the tax owed by a surplus lines licensee under this section has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines licensee. The commissioner may charge interest for any unpaid tax, fee, financial assessment or penalty, or portion thereof: *Provided,* That interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the Tax Commissioner pursuant to section seventeen-a of article ten, chapter eleven of this code and shall accrue daily.

CHAPTER 9

(S. B. 4002 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on December 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-7-1, §5B-7-2, §5B-7-3, §5B-7-4 and §5B-7-5, all relating to authorizing counties to issue recovery zone bonds; allocating recovery zone bond volume cap; implementing a process for the reallocation, suballocation and waiver of recovery zone bonds volume cap; and defining terms.

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 §5B-7-1, §5B-7-2, §5B-7-3, §5B-7-4 and §5B-7-5, all to read as follows:

ARTICLE 7. RECOVERY ZONE BONDS.

§5B-7-1. Definitions.
§5B-7-2. Allocation of volume cap for recovery zone bonds; obligations not debt of state.
§5B-7-3. Certification and wavier of volume cap allocation.
§5B-7-4. Reallocation of volume cap.
§5B-7-5. Suballocation of volume cap by counties; counties authorized to take action to issue recovery zone bonds.

§5B-7-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Economic Development Authority" or "authority" means the West Virginia Economic Development Authority as continued in section five, article fifteen, chapter thirty-one of this code.

(2) "Recovery zone bonds" means recovery zone economic development bonds and recovery zone facility bonds, authorized under Section 1401 of Title I of Subtitle B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may be issued by states, counties, certain municipalities and other qualified issuers within each state before January 1, 2011.

(3) "Recovery zone economic development bond" means the term as defined in 26 U. S. C.§1400U-2.

(4) "Recovery zone facility bond" means the term as defined in 26 U. S. C.§1400U-3.

(5) "Volume cap" means the recovery zone bond volume limitation allocated to each state and to counties and municipalities within each state in accordance with 26 U. S. C.§1400U-1.

§5B-7-2. Allocation of volume cap for recovery zone bonds; obligations not debt of state.

Pursuant to 26 U. S. C.§1400U-1(a)(3)(A), the State of West Virginia shall allocate the volume cap among the counties of the state in the same manner as described in Section 6.04 of Internal Revenue Service Notice 2009-50. Bonds, notes and other obligations issued pursuant to this article shall not constitute a debt or a pledge of the faith and

7 credit or taxing power of this state and the holders and
8 owners thereof shall have no right to have taxes levied by the
9 Legislature for the payment of the principal thereof or
10 interest thereon, but such bonds, notes and other obligations
11 shall be payable solely from revenues and funds pledged for
12 their payment as established in the authorizing orders,
13 ordinances and resolutions of such issuers. All such bonds
14 and notes, and all documents evidencing any other obligation,
15 shall contain on the face thereof a statement to the effect that
16 the bonds, notes or such other obligation as to both principal
17 and interest, are not debts of the state but are payable solely
18 from revenues and funds pledged for their payment.

§5B-7-3. Certification and waiver of volume cap allocation.

1 (a) *Preliminary certification.* --

2 (1) Each county allocated volume cap in accordance with
3 this article shall submit a preliminary certification to the
4 Governor that includes:

5 (A) The amount of volume cap the county intends to use;

6 (B) The entity issuing each series of recovery zone
7 bonds. If the county has suballocated volume cap to an
8 entity, the certification shall include a copy of an order,
9 ordinance or resolution of the county commission authorizing
10 the suballocation;

11 (C) The projects, including, but not limited to, road
12 transportation projects, to be financed by the issuance of each
13 series of recovery zone bonds; and

14 (D) The financing plan for each series of recovery zone
15 bonds, including the source of payment of the debt service of
16 each series of recovery zone bonds.

17 (2) Preliminary certifications for recovery zone economic
18 development bonds shall be submitted to the Governor on or
19 before January 31, 2010.

20 (3) Preliminary certifications for recovery zone facility
21 bonds shall be submitted to the Governor on or before
22 February 28, 2010.

23 (4) Any portion of volume cap allocated to a county that
24 is not certified for use by the county in accordance with this
25 subsection is considered waived.

26 (5) A county may waive its allocation of volume cap by
27 providing written notice of such waiver to the Governor on
28 or before January 31, 2010, in the case of volume cap for
29 recovery zone economic development bonds, or on or before
30 February 28, 2010, in the case of volume cap for recovery
31 zone facility bonds.

32 (b) *Final certification.* --

33 (1) Each county that has submitted a preliminary
34 certification to the Governor shall submit a final certification
35 to the Governor on or before July 31, 2010. The final
36 certification shall establish: (i) That the county or other entity
37 receiving a suballocation from the county has closed on each
38 series of recovery zone bonds or has entered into a bond
39 purchase agreement that requires closing on each series of
40 recovery zone bonds prior to August 31, 2010; and (ii) the
41 amount of volume cap used by the county.

42 (2) Any portion of volume cap allocated to a county that
43 is not certified as used in accordance with this subsection is
44 considered waived. However, if an entity receiving a
45 suballocation from a county submits a timely certification
46 pursuant to section five of this article, that suballocated
47 portion of the county's volume cap is not considered waived.

48 (3) If, after submitting a preliminary certification to the
49 Governor, a county determines to waive any portion of its
50 allocation of volume cap, it may waive its allocation of such
51 portion by notifying the Governor in writing on or before
52 July 31, 2010.

53 (c) *Notice of waiver.* -- The Governor shall provide
54 timely written notice to the Economic Development
55 Authority of any written volume cap waiver submitted by a
56 county.

§5B-7-4. Reallocation of volume cap.

1 (a) The Economic Development Authority shall
2 reallocate volume cap that has been waived pursuant to this
3 article. The authority may reallocate the volume cap to the
4 state, state agencies, counties, municipalities or any other
5 political subdivisions or any other eligible issuer authorized
6 to issue recovery zone bonds pursuant to Section 5.04 of
7 Internal Revenue Service Notice 2009-50.

8 (b) As soon as reasonably possible after the effective date
9 of this section the authority shall adopt a procedure for the
10 solicitation and receipt of applications, on a form and in a
11 manner prescribed by the authority, for eligible issuers
12 seeking reallocated volume cap.

13 (c) Within ninety days of receipt of written notice from
14 the Governor the authority shall reallocate any amount of
15 volume cap waived by a county pursuant to this article. The
16 authority shall provide written notice of any reallocation to
17 the entity receiving the reallocation.

§5B-7-5. Suballocation of volume cap by counties; counties authorized to take action to issue recovery zone bonds.

1 Counties allocated volume cap pursuant to this article
2 may, by order, ordinance or resolution of the county
3 commission, suballocate such allocation to municipalities or
4 any other eligible issuers authorized to issue recovery zone
5 bonds pursuant to Section 5.04 of Internal Revenue Service
6 Notice 2009-50. Each county that suballocates volume cap
7 shall attach a copy of the order, ordinance or resolution
8 authorizing the suballocation to the preliminary certification
9 required in section three of this article. Entities receiving a
10 suballocation pursuant to this section shall certify to the
11 county and to the Governor no later than July 31, 2010, that
12 the entity has closed on the recovery zone bonds using the
13 volume cap suballocation or has entered into a bond purchase
14 agreement that requires a closing on the recovery zone bonds
15 prior to August 31, 2010. Counties shall be authorized to
16 take any other action required by Internal Revenue Service
17 Notice 2009-50 to issue recovery zone bonds.

CHAPTER 10

(S. B. 4003 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]

[Passed November 19, 2009; in effect from passage.]
[Approved by the Governor on December 7, 2009.]

AN ACT to amend and reenact §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code; to amend and reenact §15-2-25b, §15-2-26, §15-2-27, §15-2-37,

§15-2-44, §15-2-45 and §15-2-46 of said code; to amend and reenact §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and §15-2A-8 of said code; to amend and reenact §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-26r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code; to amend and reenact §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code; and to amend and reenact §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code, all relating to the retirement systems administered by the West Virginia Consolidated Public Retirement Board and ensuring the plans' qualification under federal tax laws; clarifying the definitions of the Public Employees Retirement System (PERS); revising the PERS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the PERS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the PERS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); adding clarifying language to ensure that forfeitures under PERS may not be applied to increase a member's benefits; clarifying the definitions of the Deputy Sheriff Retirement System (DSRS) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the DSRS retirement annuity commencement of benefits provisions; clarifying the DSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the DSRS rollover provisions to comport with the direct rollover

requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the DSRS plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the Death, Disability and Retirement System (State Police Plan A) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan A deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan A federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan A rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan A plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the West Virginia State Police Retirement System (State Police Plan B) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan B deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan B federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan B rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery

Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan B plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the Emergency Medical Services Retirement System (EMSRS) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the EMSRS regular retirement annuity to make subject to Section 415 limitations; clarifying the EMSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the EMSRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the EMSRS plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the Teachers Retirement System (TRS); adding clarifying language to ensure that forfeitures under TRS may not be applied to increase a member's benefits; revising the TRS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic

Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Teachers Defined Contribution Retirement System (TDC); revising the TDC retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TDC federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TDC rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Judges' Retirement System (JRS); clarifying the JRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; and revising the JRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code be amended and reenacted; that §15-2-25b, §15-2-26, §15-2-27, §15-2-37, §15-2-44, §15-2-45 and §15-2-46 of said code be amended and reenacted; that §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and

§15-2A-8 of said code be amended and reenacted; that §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code be amended and reenacted; that §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-26r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code be amended and reenacted; that §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code be amended and reenacted; and that §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code be amended and reenacted, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
7. **County Commissions and Officers.**
15. **Public Safety.**
16. **Public Health.**
18. **Education.**
51. **Courts and Their Officers.**

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.

§5-10-2. Definitions.
§5-10-22. Retirement annuity.
§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.
§5-10-27a. Federal law maximum benefit limitations.
§5-10-27b. Federal law minimum required distributions.
§5-10-27c. Direct rollovers.
§5-10-27d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.
§5-10-29. Members' deposit fund; members' contributions; forfeitures.

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the Board of Trustees from time to time: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the Board of Trustees from time to time;

(6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement System;

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money;

(9) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal

government: *Provided,* That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the Clerk of the House in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, article ten, chapter five of this code and: *Provided, however,* That members of the legislative body of any political subdivision and judges of the State Court of Claims are employees receiving one year of service credit for each one-year term served and pro rated service credit for any partial term served, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(12) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(13) "Final average salary" means either of the following: *Provided,* That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of

this code and Section 401(a)(17) of the Internal Revenue Code:

(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter), during any period of three consecutive years of credited service contained within the member's ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or (B) if the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided,* That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year 1971, who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) $1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other

132 participating public employer including the State of West
133 Virginia; or (ii) "final average salary" determined in
134 accordance with paragraph (A) or (B) of this subdivision,
135 whichever computation produces the higher final average
136 salary (and in determining the annual compensation under
137 subparagraph (ii) of this proviso, the legislative compensation
138 of the former member shall be computed on the basis of
139 $1,500 multiplied by eight, and the legislative compensation
140 of the member shall be computed on the basis set forth in the
141 provisions of this subdivision immediately preceding this
142 proviso or on the basis of $1,500 multiplied by eight,
143 whichever computation as to the member produces the higher
144 annual compensation);

145 (14) "Internal Revenue Code" means the Internal
146 Revenue Code of 1986, as amended, codified at Title 26 of
147 the United States Code;

148 (15) "Limited credited service" means service by
149 employees of the West Virginia Educational Broadcasting
150 Authority, in the employment of West Virginia University,
151 during a period when the employee made contributions to
152 another retirement system, as required by West Virginia
153 University, and did not make contributions to the Public
154 Employees Retirement System: *Provided,* That while limited
155 credited service can be used for the formula set forth in
156 subsection (e), section twenty-one of this article, it may not
157 be used to increase benefits calculated under section twenty-
158 two of this article;

159 (16) "Member" means any person who has accumulated
160 contributions standing to his or her credit in the members'
161 deposit fund;

162 (17) "Participating public employer" means the State of
163 West Virginia, any board, commission, department,
164 institution or spending unit, and includes any agency created

by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(18) "Plan year" means the same as referenced in section forty-two of this article;

(19) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided,* That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however,* That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(21) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the Board of Trustees adopts from time to time;

(22) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who ceases providing service covered under this system to a participating employer;

(23) "Retirant" means any member who commences an annuity payable by the retirement system;

(24) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer; and

231 (28) "State" means the State of West Virginia.

§5-10-22. Retirement annuity.

1 (a) Upon a member's retirement, as provided in this
2 article, he or she shall receive a straight life annuity equal to
3 one and five-tenths percent of his or her final average salary
4 multiplied by the number of years, and fraction of a year, of
5 his or her credited service in force at the time of his or her
6 retirement, subject to reduction if necessary to comply with
7 the maximum benefit provisions of Section 415 of the
8 Internal Revenue Code and section twenty-seven-a of this
9 article: *Provided,* That the final average salary used in this
10 calculation does not include any lump sum payment for
11 unused, accrued leave of any kind or character. The credited
12 service used for this calculation may not include any period
13 of limited credited service: *Provided, however,* That after
14 March 1, 1970, all members retired and all members retiring
15 shall receive a straight life annuity equal to two percent of his
16 or her final average salary multiplied by the number of years,
17 and fraction of a year, of his or her credited service, exclusive
18 of limited credited service in force at the time of his or her
19 retirement, subject to reduction if necessary to comply with
20 the maximum benefit provisions of Section 415 of the
21 Internal Revenue Code and section twenty-seven-a of this
22 article. In either event, upon his or her retirement he or she
23 has the right to elect an option provided in section twenty-
24 four of this article. All annuity payments shall commence
25 effective the first day of the month following the month in
26 which a member retires or a member dies leaving a
27 beneficiary entitled to benefits and shall continue to the end
28 of the month in which the retirant or beneficiary dies, and the
29 annuity payments may not be prorated for any portion of a
30 month in which a member retires or retirant or beneficiary
31 dies. Any member receiving an annuity based in part upon
32 limited credited service is not eligible for the supplements
33 provided in sections twenty-two-a through twenty-two-d,
34 inclusive, of this article.

(b) The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of March 1, 1970, under the former provisions of this section) shall be increased from time to time during the period of his or her retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code, to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he or she were retiring as of the effective date of the latest increase in legislative compensation, but on the basis of his or her years of credited service to the date of his or her actual retirement.

§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a temporary legislative employee are reasonable and equitable exclusions for purposes of determining eligibility for such minimum benefits. For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof whose

17 employment is classified as temporary and who is employed
18 to perform services required by the Clerk of the House of
19 Delegates, the Clerk of the Senate, the Legislature or a
20 committee thereof, as the case may be, for regular sessions,
21 extraordinary sessions and/or interim meetings of the
22 Legislature.

23 If the retirement annuity of a retirant (or, if applicable, his
24 or her beneficiary) with at least twenty years of credited
25 service as of the effective date of this section is less than
26 $500 per month (including any supplemental benefits or
27 incentives provided by this article), then the monthly
28 retirement benefit for any such retired member (or if
29 applicable, his or her beneficiary) shall be increased to $500
30 per month: *Provided,* That any year of credited service while
31 an elected public official or a temporary legislative employee
32 shall not be taken into account for purposes of this section.

33 The payment of any minimum benefit under this section
34 shall be in lieu of, and not in addition to, the payments of any
35 retirement benefit or supplemental benefit or incentives
36 otherwise provided by law: *Provided,* That the minimum
37 benefit provided herein shall be subject to any limitations
38 thereon under Section 415 of the Internal Revenue Code of
39 1986, as amended, and section twenty-seven-a of this article.

40 Any minimum benefit conferred herein shall not be
41 retroactive to the time of retirement and shall apply only to
42 members who have retired prior to the effective date of this
43 section, or, if applicable, to beneficiaries receiving benefits
44 under the retirement system prior to the effective date.

§5-10-27a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations promulgated thereunder to the

5 extent applicable to governmental plans (hereafter sometimes
6 referred to as the "415 limitation(s)" or "415 dollar
7 limitation(s)"), so that the annual benefit payable under this
8 system to a member shall not exceed those limitations. Any
9 annual benefit payable under this system shall be reduced or
10 limited if necessary to an amount which does not exceed
11 those limitations. The extent to which any annuity or other
12 annual benefit payable under this retirement system shall be
13 reduced, as compared to the extent to which an annuity,
14 contributions or other benefits under any other defined
15 benefit plans or defined contribution plans required to be
16 taken into consideration under Section 415 of the Internal
17 Revenue Code shall be reduced, shall be proportional on a
18 percentage basis to the reductions made in such other plans
19 administered by the board and required to be so taken into
20 consideration under Section 415, unless a disproportionate
21 reduction is determined by the board to maximize the
22 aggregate benefits payable to the member. If the reduction is
23 under this retirement system, the board shall advise affected
24 members of any additional limitation on the annuities or
25 other annual benefit required by this section. For purposes of
26 the 415 limitations, the "limitation year" shall be the calendar
27 year. The 415 limitations are incorporated herein by
28 reference, except to the extent the following provisions may
29 modify the default provisions thereunder:

30 (a) The annual adjustment to the 415 dollar limitations
31 made by Section 415(d) of the Internal Revenue Code and the
32 regulations thereunder shall apply for each limitation year.
33 The annual adjustments to the dollar limitations under
34 Section 415(d) of the Internal Revenue Code which become
35 effective: (i) After a retirant's severance from employment
36 with the employer; or (ii) after the annuity starting date in the
37 case of a retirant who has already commenced receiving
38 benefits, will apply with respect to a retirant's annual benefit
39 in any limitation year. A retirant's annual benefit payable in
40 any limitation year from this retirement system shall in no
41 event be greater than the limit applicable at the annuity

42 starting date, as increased in subsequent years pursuant to
43 Section 415(d) of the Internal Revenue Code and the
44 regulations thereunder.

45 (b) For purposes of this section, the "annual benefit"
46 means a benefit that is payable annually in the form of a
47 straight life annuity. Except as provided below, where a
48 benefit is payable in a form other than a straight life annuity,
49 the benefit shall be adjusted to an actuarially equivalent
50 straight life annuity that begins at the same time as such other
51 form of benefit, using factors prescribed in the 415 limitation
52 regulations, before applying the 415 limitations. No actuarial
53 adjustment to the benefit shall be made for: (1) Survivor
54 benefits payable to a surviving spouse under a qualified joint
55 and survivor annuity to the extent such benefits would not be
56 payable if the member's benefit were paid in another form;
57 (2) benefits that are not directly related to retirement benefits
58 (such as a qualified disability benefit, preretirement
59 incidental death benefits, and post-retirement medical
60 benefits); or (3) the inclusion in the form of benefit of an
61 automatic benefit increase feature, provided the form of
62 benefit is not subject to Section 417(e)(3) of the Internal
63 Revenue Code and would otherwise satisfy the limitations of
64 this article, and the plan provides that the amount payable
65 under the form of benefit in any limitation year shall not
66 exceed the limits of this article applicable at the annuity
67 starting date, as increased in subsequent years pursuant to
68 Section 415(d) of the Internal Revenue Code. For this
69 purpose an automatic benefit increase feature is included in
70 a form of benefit if the form of benefit provides for
71 automatic, periodic increases to the benefits paid in that form.

72 (c) *Adjustment for benefit forms not subject to Section*
73 *417(e)(3).* -- The straight life annuity that is actuarially
74 equivalent to the member's form of benefit shall be
75 determined under this subsection if the form of the member's
76 benefit is either: (1) A nondecreasing annuity (other than a
77 straight life annuity) payable for a period of not less than the

life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) *Adjustment for benefit forms subject to Section 417(e)(3).* -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subsection (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life

114 annuity commencing at the same annuity starting date that
115 has the same actuarial present value as the member's form of
116 benefit, computed using a five and a half percent interest rate
117 assumption and the applicable mortality table defined in
118 Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
119 2001-62 or any subsequent Revenue Ruling modifying the
120 applicable provisions of Revenue Ruling 2001-62) for that
121 annuity starting date; and (3) the annual amount of the
122 straight life annuity commencing at the same annuity starting
123 date that has the same actuarial present value as the
124 member's form of benefit, computed using the applicable
125 interest rate defined in Treasury Regulation §1.417(e)-1(d)(3)
126 and the applicable mortality table defined in Treasury
127 Regulation §1.417(e)-1(d)(2) (the mortality table specified in
128 Revenue Ruling 2001-62 or any subsequent Revenue Ruling
129 modifying the applicable provisions of Revenue Ruling
130 2001-62), divided by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in subdivisions (2) and (3) of this
133 subsection, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation
135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in subdivision (1)
146 of this subsection shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified

148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the
151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in subdivision (1)
161 of this subsection shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement system (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subsection (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall
183 not cause the maximum annual benefit provided to a member
184 to be less than the member's accrued benefit as of December
185 31, 2008 (the end of the limitation year that is immediately
186 prior to the effective date of the final regulations for this
187 retirement system as defined in Treasury Regulation
188 §1.415(a)-1(g)(2)), under provisions of the retirement system
189 that were both adopted and in effect before April 5, 2007,
190 provided that such provisions satisfied the applicable
191 requirements of statutory provisions, regulations, and other
192 published guidance relating to Section 415 of the Internal
193 Revenue Code in effect as of the end of December 31, 2008,
194 as described in Treasury Regulation §1.415(a)-1(g)(4). If
195 additional benefits are accrued for a member under this
196 retirement system after January 1, 2009, then the sum of the
197 benefits described under the first sentence of this subsection
198 and benefits accrued for a member after January 1, 2009,
199 must satisfy the requirements of Section 415, taking into
200 account all applicable requirements of the final 415 Treasury
201 Regulations.

§5-10-27b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this code. This provision
4 applies to plan years beginning after December 31, 1986.
5 Notwithstanding anything in this code to the contrary, the
6 payment of benefits under this article shall be determined and
7 made in accordance with Section 401(a)(9) of the Internal
8 Revenue Code and the federal regulations promulgated
9 thereunder. For this purpose, the following provisions apply:

10 (a) The payment of benefits under the retirement system
11 to any member shall be distributed to him or her not later
12 than the required beginning date, or be distributed to him or

her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or (ii)
46 December 31 of the calendar year following the calendar year
47 in which the spouse died.

§5-10-27c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, 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: (i) 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; (ii) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (iii) 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 (iv) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in

30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code, or (for taxable
33 years beginning before January 1, 2007) to a qualified trust
34 which is part of a defined contribution plan described in
35 Section 401(a) or (for taxable years beginning after
36 December 31, 2006) to a qualified trust or to an annuity
37 contract described in Section 403(a) or (b) of the Internal
38 Revenue Code that agrees to separately account for amounts
39 transferred (including interest or earnings thereon), including
40 separately accounting for the portion of the distribution
41 which is includable in gross income and the portion of the
42 distribution which is not so includable, or (for taxable years
43 beginning after December 31, 2007) to a Roth IRA described
44 in Section 408A of the Internal Revenue Code.

45 (2) "Eligible retirement plan" means an individual
46 retirement account described in Section 408(a) of the Internal
47 Revenue Code, an individual retirement annuity described in
48 Section 408(b) of the Internal Revenue Code, an annuity plan
49 described in Section 403(a) of the Internal Revenue Code or
50 a qualified plan described in Section 401(a) of the Internal
51 Revenue Code that accepts the distributee's eligible rollover
52 distribution: *Provided,* That in the case of an eligible rollover
53 distribution prior to January 1, 2002, to the surviving spouse,
54 an eligible retirement plan is limited to an individual
55 retirement account or individual retirement annuity. For
56 distributions after December 1, 2001, an eligible retirement
57 plan also means an annuity contract described in Section
58 403(b) of the Internal Revenue Code and an eligible plan
59 under Section 457(b) of the Internal Revenue Code which is
60 maintained by a state, political subdivision of a state, or any
61 agency or instrumentality of a state or political subdivision of
62 a state and which agrees to separately account for amounts
63 transferred into the plan from this system. For distributions
64 after December 31, 2007, an eligible retirement plan also
65 means a Roth IRA described in Section 408A of the Internal

66 Revenue Code: *Provided,* That in the case of an eligible
67 rollover distribution after December 31, 2007, to a designated
68 beneficiary (other than a surviving spouse) as such term is
69 defined in Section 402(c)(11) of the Internal Revenue Code,
70 an eligible retirement plan is limited to an individual
71 retirement account or individual retirement annuity which
72 meets the conditions of Section 402(c)(11) of the Internal
73 Revenue Code.

74 (3) "Distributee" means an employee or former
75 employee. In addition, the employee's or former employee's
76 surviving spouse and the employee's or former employee's
77 spouse or former spouse who is the alternate payee under a
78 qualified domestic relations order, as defined in Section
79 414(p) of the Internal Revenue Code with respect to
80 governmental plans, are distributees with regard to the
81 interest of the spouse or former spouse. For distributions
82 after December 31, 2007, "distributee" also includes a
83 designated beneficiary (other than a surviving spouse) as
84 such term is defined in Section 402(c)(11) of the Internal
85 Revenue Code.

86 (4) "Direct rollover" means a payment by the retirement
87 system to an eligible retirement plan.

88 (b) Nothing in this section may be construed as
89 permitting rollovers into this system or any other system
90 administered by the retirement board.

§5-10-27d. 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 January 1, 2002.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise prohibit or limit rollovers and plan
5 transfers to this system, the retirement system shall accept the

following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided,* That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided,* That

no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the

accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twenty-seven-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§5-10-29. Members' deposit fund; members' contributions; forfeitures.

(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his or her annual compensations but not more than four and five-tenths percent of his or her annual compensations, as determined by the board of trustees. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of

18 a member's compensation less said deductions shall be a full
19 and complete discharge and acquittance of all claims and
20 demands whatsoever for services rendered by him or her to
21 a participating public employer, except as to benefits
22 provided by this article.

23 (c) The officer or officers responsible for making up the
24 payrolls for payroll units of the state government and for each
25 of the other participating public employers shall cause the
26 contributions, provided in subsection (b) of this section, to be
27 deducted from the compensations of each member in the
28 employ of the participating public employer, on each and
29 every payroll, for each and every payroll period, from the
30 date the member enters the retirement system to the date his
31 or her membership terminates. When deducted, each of said
32 amounts shall be paid by the participating public employer to
33 the retirement system; said payments to be made in such
34 manner and form, and in such frequency, and shall be
35 accompanied by such supporting data, as the board of
36 trustees shall from time to time prescribe. When paid to the
37 retirement system, each of said amounts shall be credited to
38 the members' deposit fund account of the member from
39 whose compensations said contributions were deducted.

40 (d) In addition to the contributions deducted from the
41 compensations of a member, as heretofore provided, a
42 member shall deposit in the members' deposit fund, by a
43 single contribution or by an increased rate of contribution as
44 approved by the board of trustees, the amounts he or she may
45 have withdrawn therefrom and not repaid thereto, together
46 with regular interest from the date of withdrawal to the date
47 of repayment. In no case shall a member be given credit for
48 service rendered prior to the date he or she withdrew his or
49 her contributions or accumulated contributions, as the case
50 may be, until he or she returns to the members' deposit fund
51 all amounts due the said fund by him or her.

52 (e) Upon the retirement of a member, or if a survivor
53 annuity becomes payable on account of his or her death, in
54 either event his or her accumulated contributions standing to
55 his or her credit in the members' deposit fund shall be
56 transferred to the retirement reserve fund.

57 (f) In the event an employee's membership in the
58 retirement system terminates and no annuity becomes or will
59 become payable on his or her account, any accumulated
60 contributions standing to his or her credit in the members'
61 deposit fund, unclaimed by the said employee, or his or her
62 legal representative, within three years from and after the
63 date his or her membership terminated, shall be transferred to
64 the income fund.

65 (g) Any member of the Legislature who is a member of
66 the retirement system and with respect to whom the term
67 "final average salary" includes a multiple of eight, pursuant
68 to the provisions of subdivision (15), section two of this
69 article, shall contribute to the retirement system on the basis
70 of his or her legislative compensation the sum of $540 each
71 year he or she participates in the retirement system as a
72 member of the Legislature.

73 (h) Notwithstanding any other provisions of this article,
74 forfeitures under the system shall not be applied to increase
75 the benefits any member would otherwise receive under the
76 system.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.
§7-14D-3. Creation and administration of West Virginia Deputy Sheriffs Retirement System; specification of actuarial assumptions.
§7-14D-9. Retirement; commencement of benefits.
§7-14D-9a. Federal law maximum benefit limitations.

§7-14D-9b. Federal law minimum required distributions.
§7-14D-9c. Direct rollovers.
§7-14D-9d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.
§7-14D-11. Retirement benefits.

§7-14D-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 one-quarter percent of the member's final average
5 salary multiplied by the member's years of credited service.
6 A member's accrued benefit may not exceed the limits of
7 Section 415 of the Internal Revenue Code and is subject to
8 the provisions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or
11 paid on his or her behalf pursuant to article ten-c, chapter five
12 of this code, either pursuant to section seven of this article or
13 section twenty-nine, article ten, chapter five of this code as a
14 result of covered employment together with regular interest
15 on the deducted amounts.

16 (c) "Active member" means a member who is active and
17 contributing to the plan.

18 (d) "Active military duty" means full-time active duty
19 with any branch of the armed forces of the United States,
20 including service with the National Guard or reserve military
21 forces when the member has been called to active full-time
22 duty and has received no compensation during the period of
23 that duty from any board or employer other than the armed
24 forces.

25 (e) "Actuarial equivalent" means a benefit of equal value
26 computed upon the basis of the mortality table and interest
27 rates as set and adopted by the retirement board in

accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided,* That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

(j) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(k) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(l) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code: *Provided,* That the deputy sheriff contributes to the fund created in section six of this article the amount specified as the deputy sheriff's contribution in section seven of this article.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service and annual leave service.

(n) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen of this chapter.

(o) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

90 (C) A child who at the time of the member's death was
91 living with the member while the member was an adopting
92 parent during any period of probation; or

93 (D) A stepchild of the member residing in the member's
94 household at the time of the member's death; or

95 (2) Any unmarried child under age twenty-three:

96 (A) Who is enrolled as a full-time student in an
97 accredited college or university;

98 (B) Who was claimed as a dependent by the member for
99 federal income tax purposes at the time of the member's
100 death; and

101 (C) Whose relationship with the member is described in
102 subparagraph (A), (B) or (C), paragraph (1) of this
103 subdivision.

104 (p) "Dependent parent" means the father or mother of the
105 member who was claimed as a dependent by the member for
106 federal income tax purposes at the time of the member's
107 death.

108 (q) "Disability service" means service credit received by
109 a member, expressed in whole years, fractions thereof or
110 both, equal to one half of the whole years, fractions thereof
111 or both, during which time a member receives disability
112 benefits under section fourteen or fifteen of this article.

113 (r) "Early retirement age" means age forty or over and
114 completion of twenty years of service.

115 (s) "Employer error" means an omission,
116 misrepresentation, or violation of relevant provisions of the
117 West Virginia Code or of the West Virginia Code of State

Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(t) "Effective date" means July 1, 1998.

(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under section fourteen or fifteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(v) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to section six of this article.

(w) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but

where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement or payment is made.

(x) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to section five of this article.

(y) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(z) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her

accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of age fifty years and the completion of twenty or more years of service; (2) while still in covered employment, attainment of at least age fifty years and when the sum of current age plus years of service equals or exceeds seventy years; (3) while still in covered employment, attainment of at least age sixty years and completion of five years of service; or (4) attainment of age sixty-two years and completion of five or more years of service.

(bb) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by article ten, chapter five of this code.

(dd) "Plan" means the West Virginia Deputy Sheriff Death, Disability and Retirement Plan established by this article.

(ee) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(ff) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(gg) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) "Retirement income payments" means the annual retirement income payments payable under the plan.

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(kk) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(ll) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(mm) *"Year of service"*. -- A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0

500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section thirteen of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§7-14D-3. Creation and administration of West Virginia Deputy Sheriffs Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Deputy Sheriffs Retirement System. The purpose of this system is to provide for the orderly retirement of deputy sheriffs who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement

system constitutes a body corporate. All business of the system shall be transacted in the name of the West Virginia Deputy Sheriffs Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board's receipt of the member's voluntary written application for retirement or the required beginning date, if earlier. Before receiving retirement income payments, the member shall have ceased covered employment and reached early or normal retirement age. The retirement income payments shall be in an amount as provided under section eleven of this article: *Provided,* That retirement income payments under this plan shall be subject to the provisions of this article. Upon receipt of the application, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process the member's request and commence payments as soon as administratively feasible.

§7-14D-9a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any

9 annual benefit payable under this system shall be reduced or
10 limited if necessary to an amount which does not exceed
11 those limitations. The extent to which any annuity or other
12 annual benefit payable under this retirement system shall be
13 reduced, as compared to the extent to which an annuity,
14 contributions or other benefits under any other defined
15 benefit plans or defined contribution plans required to be
16 taken into consideration under Section 415 of the Internal
17 Revenue Code shall be reduced, shall be proportional on a
18 percentage basis to the reductions made in such other plans
19 administered by the board and required to be so taken into
20 consideration under Section 415, unless a disproportionate
21 reduction is determined by the board to maximize the
22 aggregate benefits payable to the member. If the reduction is
23 under this retirement system, the board shall advise affected
24 members of any additional limitation on the annuities or
25 other annual benefit required by this section. For purposes of
26 the 415 limitations, the "limitation year" shall be the calendar
27 year. The 415 limitations are incorporated herein by
28 reference, except to the extent the following provisions may
29 modify the default provisions thereunder:

30 (a) The annual adjustment to the 415 dollar limitations
31 made by Section 415(d) of the Internal Revenue Code and the
32 regulations thereunder shall apply for each limitation year.
33 The annual adjustments to the dollar limitations under
34 Section 415(d) of the Internal Revenue Code which become
35 effective: (i) After a retirant's severance from employment
36 with the employer; or (ii) after the annuity starting date in the
37 case of a retirant who has already commenced receiving
38 benefits, will apply with respect to a retirant's annual benefit
39 in any limitation year. A retirant's annual benefit payable in
40 any limitation year from this retirement system shall in no
41 event be greater than the limit applicable at the annuity
42 starting date, as increased in subsequent years pursuant to
43 Section 415(d) of the Internal Revenue Code and the
44 regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) *Adjustment for benefit forms not subject to Section 417(e)(3).* -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely

81 because of: (i) The death of the survivor annuitant (but only
82 if the reduction is not below fifty percent of the benefit
83 payable before the death of the survivor annuitant); or (ii) the
84 cessation or reduction of Social Security supplements or
85 qualified disability payments (as defined in Section 411(a)(9)
86 of the Internal Revenue Code). The actuarially equivalent
87 straight life annuity is equal to the greater of: (I) The annual
88 amount of the straight life annuity (if any) payable to the
89 member under the plan commencing at the same annuity
90 starting date as the member's form of benefit; and (II) the
91 annual amount of the straight life annuity commencing at the
92 same annuity starting date that has the same actuarial present
93 value as the member's form of benefit, computed using a five
94 percent interest rate assumption and the applicable mortality
95 table defined in Treasury Regulation §1.417(e)-1(d)(2)
96 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
97 modifying the applicable provisions of Revenue Ruling
98 2001-62) for that annuity starting date.

99 (d) *Adjustment for benefit forms subject to Section*
100 *417(e)(3).* -- The straight life annuity that is actuarially
101 equivalent to the member's form of benefit shall be
102 determined under this subsection if the form of the member's
103 benefit is other than a benefit form described in subdivision
104 (c) of this section. The actuarially equivalent straight life
105 annuity shall be determined as follows: The actuarially
106 equivalent straight life annuity is equal to the greatest of: (1)
107 The annual amount of the straight life annuity commencing
108 at the same annuity starting date that has the same actuarial
109 present value as the member's form of benefit, computed
110 using the interest rate specified in this retirement system and
111 the mortality table (or other tabular factor) specified in this
112 retirement system for adjusting benefits in the same form; (2)
113 the annual amount of the straight life annuity commencing at
114 the same annuity starting date that has the same actuarial
115 present value as the member's form of benefit, computed
116 using a five and a half percent interest rate assumption and

117 the applicable mortality table defined in Treasury Regulation
118 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any
119 subsequent Revenue Ruling modifying the applicable
120 provisions of Revenue Ruling 2001-62) for that annuity
121 starting date; and (3) the annual amount of the straight life
122 annuity commencing at the same annuity starting date that
123 has the same actuarial present value as the member's form of
124 benefit, computed using the applicable interest rate defined
125 in Treasury Regulation §1.417(e)-1(d)(3) and the applicable
126 mortality table defined in Treasury Regulation §1.417(e)-
127 1(d)(2) (the mortality table specified in Revenue Ruling
128 2001-62 or any subsequent Revenue Ruling modifying the
129 applicable provisions of Revenue Ruling 2001-62), divided
130 by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in paragraphs (2) and (3) of this
133 subdivision, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation
135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in paragraph (1) of
146 this subdivision shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified
148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the

151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in paragraph (1) of
161 this subdivision shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement system (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subdivision (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall
183 not cause the maximum annual benefit provided to a member

184 to be less than the member's accrued benefit as of December
185 31, 2008 (the end of the limitation year that is immediately
186 prior to the effective date of the final regulations for this
187 retirement system as defined in Treasury Regulation
188 §1.415(a)-1(g)(2)), under provisions of the retirement system
189 that were both adopted and in effect before April 5, 2007,
190 provided that such provisions satisfied the applicable
191 requirements of statutory provisions, regulations, and other
192 published guidance relating to Section 415 of the Internal
193 Revenue Code in effect as of December 31, 2008, as
194 described in Treasury Regulation §1.415(a)-1(g)(4). If
195 additional benefits are accrued for a member under this
196 retirement system after January 1, 2009, then the sum of the
197 benefits described under the first sentence of this subsection
198 and benefits accrued for a member after January 1, 2009,
199 must satisfy the requirements of Section 415, taking into
200 account all applicable requirements of the final 415 Treasury
201 Regulations.

§7-14D-9b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this plan. This section
4 applies to plan years beginning after December 31, 1986.
5 Notwithstanding anything in the plan to the contrary, the
6 payment of benefits under this article shall be determined and
7 made in accordance with Section 401(a)(9) of the Internal
8 Revenue Code and the regulations thereunder. For this
9 purpose, the following provisions apply:

10 (a) The payment of benefits under the plan to any
11 member shall be distributed to him or her not later than the
12 required beginning date, or be distributed to him or her
13 commencing not later than the required beginning date, in
14 accordance with regulations prescribed under Section
15 401(a)(9) of the Internal Revenue Code, over the life of the

16 member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent upon, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the plan has been distributed, then the
25 remaining portion of that interest shall be distributed at least
26 as rapidly as under the method of distribution being used at
27 the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the plan shall be
30 distributed by December 31 of the calendar year containing
31 the fifth anniversary of the member's death, except as
32 follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary or
35 over a period certain not greater than the life expectancy of
36 the beneficiary, commencing on or before December 31 of
37 the calendar year immediately following the calendar year in
38 which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no later
41 than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or (ii)

46 December 31 of the calendar year following the calendar year
47 in which the spouse died.

§7-14D-9c. Direct rollovers.

1 Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993.
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; (D) any hardship distribution described
25 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code.
26 For distributions after December 31, 2001, a portion of a
27 distribution shall not fail to be an eligible rollover
28 distribution merely because the portion consists of after-tax
29 employee contributions which are not includable in gross
30 income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section

32 408(a) or (b) of the Internal Revenue Code, or (for taxable
33 years beginning before January 1, 2007) to a qualified trust
34 which is part of a defined contribution plan described in
35 Section 401(a) or (for taxable years beginning after
36 December 31, 2006) to a qualified trust or to an annuity
37 contract described in Section 403(a) or (b) of the Internal
38 Revenue Code that agrees to separately account for amounts
39 transferred (including interest or earnings thereon), including
40 separately accounting for the portion of the distribution
41 which is includable in gross income and the portion of the
42 distribution which is not so includable, or (for taxable years
43 beginning after December 31, 2007) to a Roth IRA described
44 in Section 408A of the Internal Revenue Code.

45 (2) "Eligible retirement plan" means an individual
46 retirement account described in Section 408(a) of the Internal
47 Revenue Code, an individual retirement annuity described in
48 Section 408(b) of the Internal Revenue Code, an annuity plan
49 described in Section 403(a) of the Internal Revenue Code or
50 a qualified plan described in Section 401(a) of the Internal
51 Revenue Code that accepts the distributee's eligible rollover
52 distribution: *Provided,* That in the case of an eligible rollover
53 distribution prior to January 1, 2002, to the surviving spouse,
54 an eligible retirement plan is limited to an individual
55 retirement account or individual retirement annuity. For
56 distributions after December 31, 2001, an eligible retirement
57 plan also means an annuity contract described in Section
58 403(b) of the Internal Revenue Code and an eligible plan
59 under Section 457(b) of the Internal Revenue Code which is
60 maintained by a state, political subdivision of a state, or any
61 agency or instrumentality of a state or political subdivision of
62 a state and which agrees to separately account for amounts
63 transferred into the plan from this system. For distributions
64 after December 31, 2007, an eligible retirement plan also
65 means a Roth IRA described in Section 408A of the Internal
66 Revenue Code: *Provided, however,* That in the case of an
67 eligible rollover distribution after December 31, 2007, to a

68 designated beneficiary (other than a surviving spouse) as
69 such term is defined in Section 402(c)(11) of the Internal
70 Revenue Code, an eligible retirement plan is limited to an
71 individual retirement account or individual retirement annuity
72 which meets the conditions of Section 402(c)(11) of the
73 Internal Revenue Code.

74 (3) "Distributee" means an employee or former
75 employee. In addition, the employee's or former employee's
76 surviving spouse and the employee's or former employee's
77 spouse or former spouse who is the alternate payee under a
78 qualified domestic relations order, as defined in Section
79 414(p) of the Internal Revenue Code with respect to
80 governmental plans, are distributees with regard to the
81 interest of the spouse or former spouse. For distributions
82 after December 31, 2007, "distributee" also includes a
83 designated beneficiary (other than a surviving spouse) as
84 such term is defined in Section 402(c)(11) of the Internal
85 Revenue Code.

86 (4) "Direct rollover" means a payment by the plan to the
87 eligible retirement plan.

§7-14D-9d. 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 January 1, 2002.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise prohibit or limit rollovers and plan
5 transfers to this system, the retirement system shall accept the
6 following rollovers and plan transfers on behalf of a member
7 solely for the purpose of purchasing permissive service
8 credit, in whole or in part, as otherwise provided in this
9 article or for the repayment of withdrawn or refunded
10 contributions, in whole and in part, with respect to a previous
11 forfeiture of service credit as otherwise provided in this

article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided,* That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided,* That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a

48 rollover or plan transfer) before the member has at least five
49 years of participation in the retirement system.

50 (2) "Repayment of withdrawn or refunded contributions"
51 means the payment into the retirement system of the funds
52 required pursuant to this article for the reinstatement of
53 service credit previously forfeited on account of any refund
54 or withdrawal of contributions permitted in this article, as set
55 forth in Section 415(k)(3) of the Internal Revenue Code.

56 (3) Any contribution (other than by means of a rollover
57 or plan transfer) to purchase permissive service credit under
58 any provision of this article must satisfy the special limitation
59 rules described in Section 415(n) of the Internal Revenue
60 Code, and shall be automatically reduced, limited, or required
61 to be paid over multiple years if necessary to ensure such
62 compliance. To the extent any such purchased permissive
63 service credit is qualified military service within the meaning
64 of Section 414(u) of the Internal Revenue Code, the
65 limitations of Section 415 of the Internal Revenue Code shall
66 be applied to such purchase as described in Section
67 414(u)(1)(B) of the Internal Revenue Code.

68 (4) For purposes of Section 415(b) of the Internal
69 Revenue Code, the annual benefit attributable to any rollover
70 contribution accepted pursuant to this section shall be
71 determined in accordance with Treasury Regulation
72 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
73 payments attributable to any rollover contribution provided
74 under the retirement system over the annual benefit so
75 determined shall be taken into account when applying the
76 accrued benefit limitations of Section 415(b) of the Internal
77 Revenue Code and section nine-a of this article.

78 (b) Nothing in this section shall be construed as
79 permitting rollovers or transfers into this system or any other
80 system administered by the retirement board other than as

specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§7-14D-11. Retirement benefits.

This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under section twelve of this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section nine-a of this article. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) *Normal retirement.* -- A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued retirement benefit based on years of service and final average salary at termination of employment.

(b) *Early retirement.* -- A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with

or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

CHAPTER 15. PUBLIC SAFETY.

Article

2. West Virginia State Police.
2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25b. Definitions.
§15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.
§15-2-27. Retirement; awards and benefits; leased employees.
§15-2-37. Refunds to certain employees upon discharge or resignation; deferred retirement.
§15-2-44. Federal law maximum benefit limitations.
§15-2-45. Federal law minimum required distributions.
§15-2-46. Direct rollovers.

§15-2-25b. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of

5 the mortality table and interest rates as set and adopted by the
6 retirement board in accordance with the provisions of this
7 article: *Provided,* That when used in the context of
8 compliance with the federal maximum benefit requirements
9 of Section 415 of the Internal Revenue Code, "actuarially
10 equivalent" shall be computed using the mortality tables and
11 interest rates required to comply with those requirements.

12 (b) "Agency" means the West Virginia State Police.

13 (c) "Beneficiary" means a surviving spouse or other
14 surviving beneficiary who is entitled to, or will be entitled to,
15 an annuity or other benefit payable by the fund.

16 (d) "Board" means the West Virginia Consolidated
17 Public Retirement Board created pursuant to article ten-d,
18 chapter five of this code.

19 (e) "Dependent child" means any unmarried child or
20 children born to or adopted by a member of the fund who is:

21 (1) Under the age of eighteen;

22 (2) After reaching eighteen years of age, continues as a
23 full-time student in an accredited high school, college,
24 university, business or trade school, until the child or children
25 reaches the age of twenty-three years; or

26 (3) Is financially dependent on the member by virtue of
27 a permanent mental or physical disability upon evidence
28 satisfactory to the board.

29 (f) "Dependent parent" means the member's parent or
30 stepparent claimed as a dependent by the member for federal
31 income tax purposes at the time of the member's death.

32 (g) "Employee" means any person regularly employed in
33 the service of the agency as a law-enforcement officer before
34 March 12, 1994, and who is eligible to participate in the fund.

35 (h) "Fund", "plan" or "system" means the West Virginia
36 State Police Death, Disability and Retirement Fund.

37 (i) "Law-enforcement officer" means an individual
38 employed or otherwise engaged in either a public or private
39 position which involves the rendition of services relating to
40 enforcement of federal, state or local laws for the protection
41 of public or private safety, including, but not limited to,
42 positions as deputy sheriffs, police officers, marshals,
43 bailiffs, court security officers or any other law-enforcement
44 position which requires certification, but excluding positions
45 held by elected sheriffs or appointed chiefs of police whose
46 duties are determined by the board to be purely
47 administrative in nature.

48 (j) "Member" means any person who has contributions
49 standing to his or her credit in the fund and who has not yet
50 entered into retirement status.

51 (k) "Partially disabled" means an employee's inability, on
52 a probable permanent basis, to perform the essential duties of
53 a law-enforcement officer by reason of any medically
54 determinable physical or mental impairment which has lasted
55 or can be expected to last for a continuous period of not less
56 than twelve months, but which impairment does not preclude
57 the employee from engaging in other types of nonlaw-
58 enforcement employment.

59 (l) "Physical or mental impairment" means an
60 impairment that results from an anatomical, physiological or
61 psychological abnormality that is demonstrated by medically
62 accepted clinical and laboratory diagnostic techniques.

63 (m) "Plan year" means the twelve-month period
64 commencing on July 1 of any designated year and ending the
65 following June 30.

(n) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(o) "Retirant" or "retiree" means any former member who is receiving an annuity payable by the fund.

(p) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(q) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subsection, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (1) The work exists in the immediate area in which the employee lives; (2) a specific job vacancy exists; or (3) the employee would be hired if he or she applied for work.

§15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members, retirants and any dependents of retirants or deceased members of the fund. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section twenty-five-b of this article.

(b) There shall be deducted from the monthly payroll of each employee and paid into the fund six percent of the amount of his or her salary: *Provided,* That beginning on July 1, 1994, there shall be deducted from the monthly payroll of each employee and paid into the fund seven and one-half percent of the amount of his or her salary: *Provided, however,* That on and after July 1, 1995, there shall be deducted from the monthly payroll of each employee and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each employee shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the agency: *Provided further,* That beginning on July 1, 1995, the agency shall pay thirteen percent of the monthly salary of each employee into the fund: *And provided further,* That beginning on July 1, 1996, the agency shall pay fourteen percent of the monthly salary of each employee into the fund: *And provided further,* That on and after July 1, 1997, the agency shall pay fifteen percent of the monthly salary of each employee into the fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the agency on account of payments to employees for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the State Treasury and the board shall keep a separate account thereof.

(c) Notwithstanding any other provisions of this article, forfeitures under the fund shall not be applied to increase the benefits any member would otherwise receive under the fund.

(d) The moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever, with the exception that the benefits or contributions under the fund are subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and are unassignable except as is provided in this article. The fund shall be administered by the board created pursuant to article ten-d, chapter five of this code.

(e) All moneys paid into and accumulated in the fund, except amounts designated or set aside by the awards, shall be invested by the West Virginia Investment Management Board as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

(a) The board shall retire any member of the fund who has filed with the board his or her voluntary petition in writing for retirement and:

(1) Has or shall have completed twenty-five years of service as a member of the fund (including military service credit granted under the provisions of section twenty-eight of this article);

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the fund (excluding military service credit granted under section twenty-eight of this article); or

12 (3) Being under the age of fifty years has or shall have
13 completed twenty years of service as a member of the fund
14 (excluding military service credit granted under section
15 twenty-eight of this article).

16 (b) When the board retires any member under any of the
17 provisions of this section, the member is entitled to receive
18 annually and shall be paid from the fund in equal monthly
19 installments during his or her lifetime while in status of
20 retirement, one or the other of two amounts, whichever is the
21 greater, subject to reduction if necessary to comply with the
22 maximum benefit provisions of Section 415 of the Internal
23 Revenue Code and section forty-four of this article:

24 (1) An amount equal to five and one-half percent of the
25 aggregate of salary paid to the employee during the whole
26 period of service as an employee of the agency; or

27 (2) The sum of $6,000.

28 When a member has or shall have served twenty years or
29 longer but less than twenty-five years as a member of the
30 fund and is retired under any of the provisions of this section
31 before he or she has attained the age of fifty years, payment
32 of monthly installments of the amount of retirement award to
33 the member shall commence on the day following the date he
34 or she attains the age of fifty years. Beginning on July 15,
35 1994, in no event may the provisions of section thirteen,
36 article sixteen, chapter five of this code be applied in
37 determining eligibility to retire with either immediate or
38 deferred commencement of benefit.

39 (c) A member meeting the age and service requirements
40 of this section who terminates employment at two thousand
41 four hundred hours may begin to receive retirement annuity
42 payments immediately upon termination of employment.
43 Any member meeting the age and service requirements of
44 this section who terminates employment at a time of day

other than two thousand four hundred hours shall receive a pro rata share of a full day's amount for that day. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement petition and commence annuity payments as soon as administratively feasible.

(d) Any individual who is a leased employee is not eligible to participate in the fund. For purposes of this fund, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§15-2-37. Refunds to certain employees upon discharge or resignation; deferred retirement.

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency, at the written request of the member to the board, is entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reemployed by the agency shall not receive any prior service credit in the fund on account of former service. The employee may redeposit in the fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been

18 made. He or she shall become a member of the retirement
19 system established in article two-a of this chapter.

20 (c) Every employee who completes ten years of service
21 with the agency is eligible, upon separation of employment,
22 either to withdraw his or her contributions in accordance with
23 subsection (a) of this section or to choose not to withdraw his
24 or her accumulated contributions with interest. Upon
25 attainment of age sixty-two, a member who chooses not to
26 withdraw his or her contributions is eligible to receive a
27 retirement annuity. Any member choosing to receive the
28 deferred annuity under this subsection is not eligible to
29 receive the annual annuity adjustment provided in section
30 twenty-seven-a of this article. When the board retires any
31 member under any of the provisions of this section, the
32 member is entitled to receive annually and shall be paid from
33 the fund in equal monthly installments during the lifetime of
34 the member while in status of retirement one or the other of
35 two amounts, whichever is greater, subject to reduction if
36 necessary to comply with the maximum benefit provisions of
37 Section 415 of the Internal Revenue Code and section forty-
38 four of this article:

39 (1) An amount equal to five and one-half percent of the
40 aggregate of salary paid to the employee during the whole
41 period of service as an employee of the agency; or

42 (2) The sum of $6,000.

43 (d) A member may choose, in lieu of a life annuity
44 available under the provisions of subsection (c) of this
45 section, an annuity in a reduced amount payable during the
46 member's lifetime, with one half of the reduced monthly
47 amount paid to his or her surviving spouse, for the spouse's
48 remaining lifetime after the death of the retirant. Reduction
49 of this monthly benefit amount shall be calculated to be of
50 equal actuarial value to the life annuity the member could
51 otherwise have chosen.

(e) A member retiring under the provisions of this section may receive retirement annuity payments on the day following his or her attaining age sixty-two. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement benefit and commence annuity payments as soon as administratively feasible.

§15-2-44. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this fund shall be reduced, as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members or retirants of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the

extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement fund shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal

63 Revenue Code and would otherwise satisfy the limitations of
64 this article, and the plan provides that the amount payable
65 under the form of benefit in any limitation year shall not
66 exceed the limits of this article applicable at the annuity
67 starting date, as increased in subsequent years pursuant to
68 Section 415(d) of the Internal Revenue Code. For this
69 purpose an automatic benefit increase feature is included in
70 a form of benefit if the form of benefit provides for
71 automatic, periodic increases to the benefits paid in that form.

72 (c) *Adjustment for benefit forms not subject to Section*
73 *417(e)(3).* -- The straight life annuity that is actuarially
74 equivalent to the member's form of benefit shall be
75 determined under this subsection if the form of the member's
76 benefit is either: (1) A nondecreasing annuity (other than a
77 straight life annuity) payable for a period of not less than the
78 life of the member (or, in the case of a qualified preretirement
79 survivor annuity, the life of the surviving spouse); or (2) an
80 annuity that decreases during the life of the member merely
81 because of: (i) The death of the survivor annuitant (but only
82 if the reduction is not below fifty percent of the benefit
83 payable before the death of the survivor annuitant); or (ii) the
84 cessation or reduction of Social Security supplements or
85 qualified disability payments (as defined in Section 411(a)(9)
86 of the Internal Revenue Code). The actuarially equivalent
87 straight life annuity is equal to the greater of: (I) The annual
88 amount of the straight life annuity (if any) payable to the
89 member under the plan commencing at the same annuity
90 starting date as the member's form of benefit; and (II) the
91 annual amount of the straight life annuity commencing at the
92 same annuity starting date that has the same actuarial present
93 value as the member's form of benefit, computed using a five
94 percent interest rate assumption and the applicable mortality
95 table defined in Treasury Regulation §1.417(e)-1(d)(2)
96 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
97 modifying the applicable provisions of Revenue Ruling
98 2001-62) for that annuity starting date.

99 (d) *Adjustment for benefit forms subject to Section*
100 *417(e)(3).* -- The straight life annuity that is actuarially
101 equivalent to the member's form of benefit shall be
102 determined under this subsection if the form of the member's
103 benefit is other than a benefit form described in subdivision
104 (c) of this section. In this case, the actuarially equivalent
105 straight life annuity shall be determined as follows: The
106 actuarially equivalent straight life annuity is equal to the
107 greatest of: (1) The annual amount of the straight life annuity
108 commencing at the same annuity starting date that has the
109 same actuarial present value as the member's form of benefit,
110 computed using the interest rate specified in this retirement
111 fund and the mortality table (or other tabular factor) specified
112 in this retirement fund for adjusting benefits in the same
113 form; (2) the annual amount of the straight life annuity
114 commencing at the same annuity starting date that has the
115 same actuarial present value as the member's form of benefit,
116 computed using a five and a half percent interest rate
117 assumption and the applicable mortality table defined in
118 Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
119 2001-62 or any subsequent Revenue Ruling modifying the
120 applicable provisions of Revenue Ruling 2001-62) for that
121 annuity starting date; and (3) the annual amount of the
122 straight life annuity commencing at the same annuity starting
123 date that has the same actuarial present value as the
124 member's form of benefit, computed using the applicable
125 interest rate defined in Treasury Regulation §1.417(e)-1(d)(3)
126 and the applicable mortality table defined in Treasury
127 Regulation §1.417(e)-1(d)(2) (the mortality table specified in
128 Revenue Ruling 2001-62 or any subsequent Revenue Ruling
129 modifying the applicable provisions of Revenue Ruling
130 2001-62), divided by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in paragraphs (2) and (3) of this
133 subdivision, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation

135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in paragraph (1) of
146 this subdivision shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified
148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the
151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in paragraph (1) of
161 this subdivision shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement fund (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subdivision (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall
183 not cause the maximum annual benefit provided to a member
184 to be less than the member's accrued benefit as of December
185 31, 2008 (the end of the limitation year that is immediately
186 prior to the effective date of the final regulations for this
187 retirement system as defined in Treasury Regulation
188 §1.415(a)-1(g)(2)), under provisions of the retirement system
189 that were both adopted and in effect before April 5, 2007,
190 provided that such provisions satisfied the applicable
191 requirements of statutory provisions, regulations, and other
192 published guidance relating to Section 415 of the Internal
193 Revenue Code in effect as of December 31, 2008, as
194 described in Treasury Regulation §1.415(a)-1(g)(4). If
195 additional benefits are accrued for a member under this
196 retirement system after January 1, 2009, then the sum of the
197 benefits described under the first sentence of this subsection
198 and benefits accrued for a member after January 1, 2009,
199 must satisfy the requirements of Section 415, taking into
200 account all applicable requirements of the final 415 Treasury
201 Regulations.

§15-2-45. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and

take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after December 31, 1998. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary. For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund shall be distributed by December 31 of the calendar year containing

the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§15-2-46. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this fund, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the 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; (iv) any hardship distribution described
26 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code;
27 and (v) any other distribution or distributions that are
28 reasonably expected to total less than $200 during a year.
29 For distributions after December 31, 2001, a portion of a
30 distribution shall not fail to be an eligible rollover
31 distribution merely because the portion consists of after-tax
32 employee contributions which are not includable in gross
33 income. However, this portion may be paid only to an
34 individual retirement account or annuity described in Section
35 408(a) or (b) of the Internal Revenue Code, or (for taxable
36 years beginning before January 1, 2007) to a qualified trust
37 which is part of a defined contribution plan described in
38 Section 401(a) or (for taxable years beginning after
39 December 31, 2006) to a qualified trust or to an annuity
40 contract described in Section 403(a) or(b) of the Internal
41 Revenue Code that agrees to separately account for amounts
42 transferred (including interest or earnings thereon), including
43 separately accounting for the portion of the distribution
44 which is includable in gross income and the portion of the
45 distribution which is not so includable, or (for taxable years
46 beginning after December 31, 2007) to a Roth IRA described
47 in Section 408A of the Internal Revenue Code.

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the Internal
50 Revenue Code, an individual retirement annuity described in

Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: *Provided, however,* That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: *Provided,* That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means a member. In addition, the member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this fund or any other retirement system administered by the board.

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-6. Retirement; commencement of benefits.
§15-2A-6a. Federal law maximum benefit limitations.
§15-2A-6b. Federal law minimum required distributions.
§15-2A-6c. Direct rollovers.
§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.
§15-2A-8. Refunds to certain members upon discharge of resignation; deferred retirement.

§15-2A-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of

17 compliance with the federal maximum benefit requirements
18 of Section 415 of the Internal Revenue Code, "actuarially
19 equivalent" shall be computed using the mortality tables and
20 interest rates required to comply with those requirements.

21 (4) "Agency" means the West Virginia State Police.

22 (5) "Base salary" means compensation paid to an
23 employee without regard to any overtime pay.

24 (6) "Beneficiary" means a surviving spouse or other
25 surviving beneficiary who is entitled to, or will be entitled to,
26 an annuity or other benefit payable by the fund.

27 (7) "Board" means the Consolidated Public Retirement
28 Board created pursuant to article ten-d, chapter five of this
29 code.

30 (8) "Dependent child" means any unmarried child or
31 children born to or adopted by a member or retirant of the
32 fund who:

33 (A) Is under the age of eighteen;

34 (B) After reaching eighteen years of age, continues as a
35 full-time student in an accredited high school, college,
36 university, business or trade school until the child or children
37 reaches the age of twenty-three years; or

38 (C) Is financially dependent on the member or retirant by
39 virtue of a permanent mental or physical disability upon
40 evidence satisfactory to the board.

41 (9) "Dependent parent" means the member's or retirant's
42 parent or stepparent claimed as a dependent by the member
43 or retirant for federal income tax purposes at the time of the
44 member's or retirant's death.

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after May 12, 1994, and who is eligible to participate in the fund.

(11) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last ten years of service: *Provided,* That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(12) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(14) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(15) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

77 (16) "Month of service" means each month for which an
78 employee is paid or entitled to payment for at least one hour
79 of service for which contributions were remitted to the fund.
80 These months shall be credited to the member for the
81 calendar year in which the duties are performed.

82 (17) "Partially disabled" means an employee's inability,
83 on a probable permanent basis, to perform the essential duties
84 of a law-enforcement officer by reason of any medically
85 determinable physical or mental impairment which has lasted
86 or can be expected to last for a continuous period of not less
87 than twelve months, but which impairment does not preclude
88 the employee from engaging in other types of nonlaw-
89 enforcement employment.

90 (18) "Physical or mental impairment" means an
91 impairment that results from an anatomical, physiological or
92 psychological abnormality that is demonstrated by medically
93 accepted clinical and laboratory diagnostic techniques.

94 (19) "Plan year" means the twelve-month period
95 commencing on July 1 of any designated year and ending the
96 following June 30.

97 (20) "Qualified public safety employee" means any
98 employee of a participating state or political subdivision who
99 provides police protection, fire-fighting services or
100 emergency medical services for any area within the
101 jurisdiction of the state or political subdivision, or such other
102 meaning given to the term by Section 72(t)(10)(B) of the
103 Internal Revenue Code or by Treasury Regulation §1.401(a)-
104 1(b)(2)(v) as they may be amended from time to time.

105 (21) "Required beginning date" means April 1 of the
106 calendar year following the later of: (a) The calendar year in
107 which the member attains age seventy and one-half years; or
108 (b) the calendar year in which he or she retires or otherwise

separates from service with the agency after having attained the age of seventy and one-half years.

(22) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(23) "Salary" means the compensation of an employee, excluding any overtime payments.

(24) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(25) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(26) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by twelve. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the

141 agency. If a member returns to active employment with the
142 agency following a previous termination of employment with
143 the agency and the member has not received a refund of
144 contributions plus interest for the previous employment under
145 section eight of this article, service shall be calculated
146 separately for each period of continuous employment and
147 years of service shall be the total service for all periods of
148 employment. Years of service shall exclude any periods of
149 employment with the agency for which a refund of
150 contributions plus interest has been paid to the member
151 unless the employee repays the previous withdrawal, as
152 provided in section eight of this article, to reinstate the years
153 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. It is contemplated that substantially all of the
3 members of the retirement system shall be qualified public
4 safety employees as defined in section two of this article.
5 Any West Virginia state trooper employed by the agency on
6 or after the effective date of this article shall be a member of
7 this retirement system and may not qualify for membership
8 in any other retirement system administered by the board so
9 long as he or she remains employed by the State Police.

10 (b) Any individual who is a leased employee shall not be
11 eligible to participate in the system. For purposes of this
12 system, a "leased employee" means any individual who
13 performs services as an independent contractor or pursuant to
14 an agreement with an employee leasing organization or other
15 similar organization. If a question arises regarding the status
16 of an individual as a leased employee, the board has final
17 power to decide the question.

(c) The board created pursuant to article ten-d, chapter five of this code shall administer the retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the employees, members, retirants and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with this section.

§15-2A-6. Retirement; commencement of benefits.

(a) A member may retire with full benefits upon attaining the age of fifty and completing twenty-five or more years of service or attaining the age of fifty-two and completing twenty years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age fifty-two may retire upon completing twenty years or more of service: *Provided,* That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of fifty-two.

(b) When the board retires a member with full benefits under the provisions of this section, the board, by order in

writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section six-a of this article. The retirant's annuity shall begin the first day of the calendar month following the month in which the member's application for the annuity is filed with the board on or after his or her attaining age and service requirements and termination of employment.

(c) In no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.

§15-2A-6a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and Treasury Regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional

18 on a percentage basis to the reductions made in such other
19 plans administered by the board and required to be so taken
20 into consideration under Section 415, unless a
21 disproportionate reduction is determined by the board to
22 maximize the aggregate benefits payable to the member. If
23 the reduction is under this retirement system, the board shall
24 advise affected members or retirants of any additional
25 limitation on the annuities or other annual benefit required by
26 this section. For purposes of the 415 limitations, the
27 "limitation year" shall be the calendar year. The 415
28 limitations are incorporated herein by reference, except to the
29 extent the following provisions may modify the default
30 provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and the
33 regulations thereunder shall apply for each limitation year.
34 The annual adjustments to the dollar limitations under
35 Section 415(d) of the Internal Revenue Code which become
36 effective: (i) After a retirant's severance from employment
37 with the employer; or (ii) after the annuity starting date in the
38 case of a retirant who has already commenced receiving
39 benefits, will apply with respect to a retirant's annual benefit
40 in any limitation year. A retirant's annual benefit payable in
41 any limitation year from this retirement system shall in no
42 event be greater than the limit applicable at the annuity
43 starting date, as increased in subsequent years pursuant to
44 Section 415(d) of the Internal Revenue Code and the
45 regulations thereunder.

46 (b) For purposes of this section, the "annual benefit"
47 means a benefit that is payable annually in the form of a
48 straight life annuity. Except as provided below, where a
49 benefit is payable in a form other than a straight life annuity,
50 the benefit shall be adjusted to an actuarially equivalent
51 straight life annuity that begins at the same time as such other

52 form of benefit, using factors prescribed in the 415 limitation
53 regulations, before applying the 415 limitations. No actuarial
54 adjustment to the benefit shall be made for: (1) Survivor
55 benefits payable to a surviving spouse under a qualified joint
56 and survivor annuity to the extent such benefits would not be
57 payable if the member's benefit were paid in another form;
58 (2) benefits that are not directly related to retirement benefits
59 (such as a qualified disability benefit, preretirement
60 incidental death benefits, and post-retirement medical
61 benefits); or (3) the inclusion in the form of benefit of an
62 automatic benefit increase feature, provided the form of
63 benefit is not subject to Section 417(e)(3) of the Internal
64 Revenue Code and would otherwise satisfy the limitations of
65 this article, and the plan provides that the amount payable
66 under the form of benefit in any limitation year shall not
67 exceed the limits of this article applicable at the annuity
68 starting date, as increased in subsequent years pursuant to
69 Section 415(d) of the Internal Revenue Code. For this
70 purpose an automatic benefit increase feature is included in
71 a form of benefit if the form of benefit provides for
72 automatic, periodic increases to the benefits paid in that form.

73 (c) *Adjustment for benefit forms not subject to Section*
74 *417(e)(3).* -- The straight life annuity that is actuarially
75 equivalent to the member's form of benefit shall be
76 determined under this subsection if the form of the member's
77 benefit is either: (1) A nondecreasing annuity (other than a
78 straight life annuity) payable for a period of not less than the
79 life of the member (or, in the case of a qualified preretirement
80 survivor annuity, the life of the surviving spouse); or (2) an
81 annuity that decreases during the life of the member merely
82 because of: (i) The death of the survivor annuitant (but only
83 if the reduction is not below fifty percent of the benefit
84 payable before the death of the survivor annuitant); or (ii) the
85 cessation or reduction of Social Security supplements or
86 qualified disability payments (as defined in Section 411(a)(9)
87 of the Internal Revenue Code). The actuarially equivalent

88 straight life annuity is equal to the greater of: (I) The annual
89 amount of the straight life annuity (if any) payable to the
90 member under the plan commencing at the same annuity
91 starting date as the member's form of benefit; and (II) the
92 annual amount of the straight life annuity commencing at the
93 same annuity starting date that has the same actuarial present
94 value as the member's form of benefit, computed using a five
95 percent interest rate assumption and the applicable mortality
96 table defined in Treasury Regulation §1.417(e)-1(d)(2)
97 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
98 modifying the applicable provisions of Revenue Ruling
99 2001-62) for that annuity starting date.

100 (d) *Adjustment for benefit forms subject to Section*
101 *417(e)(3).* -- The straight life annuity that is actuarially
102 equivalent to the member's form of benefit shall be
103 determined under this subsection if the form of the member's
104 benefit is other than a benefit form described in subdivision
105 (c) of this section. In this case, the actuarially equivalent
106 straight life annuity shall be determined as follows: The
107 actuarially equivalent straight life annuity is equal to the
108 greatest of: (1) The annual amount of the straight life annuity
109 commencing at the same annuity starting date that has the
110 same actuarial present value as the member's form of benefit,
111 computed using the interest rate specified in this retirement
112 system and the mortality table (or other tabular factor)
113 specified in this retirement system for adjusting benefits in
114 the same form; (2) the annual amount of the straight life
115 annuity commencing at the same annuity starting date that
116 has the same actuarial present value as the member's form of
117 benefit, computed using a five and a half percent interest rate
118 assumption and the applicable mortality table defined in
119 Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
120 2001-62 or any subsequent Revenue Ruling modifying the
121 applicable provisions of Revenue Ruling 2001-62) for that
122 annuity starting date; and (3) the annual amount of the
123 straight life annuity commencing at the same annuity starting

124 date that has the same actuarial present value as the
125 member's form of benefit, computed using the applicable
126 interest rate defined in Treasury Regulation §1.417(e)-1(d)(3)
127 and the applicable mortality table defined in Treasury
128 Regulation §1.417(e)-1(d)(2) (the mortality table specified in
129 Revenue Ruling 2001-62 or any subsequent Revenue Ruling
130 modifying the applicable provisions of Revenue Ruling
131 2001-62), divided by 1.05.

132 (e) *Benefits payable prior to age sixty-two.* --

133 (1) Except as provided in paragraphs (2) and (3) of this
134 subdivision, if the member's retirement benefits become
135 payable before age sixty-two, the 415 dollar limitation
136 prescribed by this section shall be reduced in accordance with
137 regulations issued by the Secretary of the Treasury pursuant
138 to the provisions of Section 415(b) of the Internal Revenue
139 Code, so that the limitation (as so reduced) equals an annual
140 straight life benefit (when the retirement income benefit
141 begins) which is equivalent to an annual benefit in the
142 amount of the applicable dollar limitation of Section
143 415(b)(1)(A) of the Internal Revenue Code (as adjusted
144 pursuant to Section 415(d) of the Internal Revenue Code)
145 beginning at age sixty-two.

146 (2) The limitation reduction provided in paragraph (1) of
147 this subdivision shall not apply if the member commencing
148 retirement benefits before age sixty-two is a qualified
149 participant. A qualified participant for this purpose is a
150 participant in a defined benefit plan maintained by a state, or
151 any political subdivision of a state, with respect to whom the
152 service taken into account in determining the amount of the
153 benefit under the defined benefit plan includes at least fifteen
154 years of service: (i) As a full-time employee of any police or
155 fire department organized and operated by the state or
156 political subdivision maintaining the defined benefit plan to
157 provide police protection, fire-fighting services or emergency
158 medical services for any area within the jurisdiction of such

159 state or political subdivision; or (ii) as a member of the armed
160 forces of the United States.

161 (3) The limitation reduction provided in paragraph (1) of
162 this subdivision shall not be applicable to preretirement
163 disability benefits or preretirement death benefits.

164 (4) For purposes of adjusting the 415 dollar limitation for
165 benefit commencement before age sixty-two or after age
166 sixty-five (if the plan provides for such adjustment), no
167 adjustment is made to reflect the probability of a member's
168 death: (i) After the annuity starting date and before age sixty-
169 two; or (ii) after age sixty-five and before the annuity starting
170 date.

171 (f) *Adjustment when member has less than ten years of*
172 *participation.* -- In the case of a member who has less than
173 ten years of participation in the retirement system (within the
174 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
175 415 dollar limitation (as adjusted pursuant to Section 415(d)
176 of the Internal Revenue Code and subdivision (e) of this
177 section) shall be reduced by multiplying the otherwise
178 applicable limitation by a fraction, the numerator of which is
179 the number of years of participation in the plan (or one, if
180 greater), and the denominator of which is ten. This
181 adjustment shall not be applicable to preretirement disability
182 benefits or preretirement death benefits.

183 (g) The application of the provisions of this section shall
184 not cause the maximum annual benefit provided to a member
185 to be less than the member's accrued benefit as of December
186 31, 2008 (the end of the limitation year that is immediately
187 prior to the effective date of the final regulations for this
188 retirement system as defined in Treasury Regulation
189 §1.415(a)-1(g)(2)), under provisions of the retirement system
190 that were both adopted and in effect before April 5, 2007,
191 provided that such provisions satisfied the applicable

192 requirements of statutory provisions, regulations and other
193 published guidance relating to Section 415 of the Internal
194 Revenue Code in effect as of the end of December 31, 2008,
195 as described in Treasury Regulation §1.415(a)-1(g)(4). If
196 additional benefits are accrued for a member under this
197 retirement system after January 1, 2009, then the sum of the
198 benefits described under the first sentence of this subsection
199 and benefits accrued for a member after January 1, 2009,
200 must satisfy the requirements of Section 415, taking into
201 account all applicable requirements of the final 415 Treasury
202 Regulations.

§15-2A-6b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's interest and take precedence over any
3 inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after December 31,
5 1986. Notwithstanding anything in the retirement system to
6 the contrary, the payment of benefits under this article shall
7 be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the regulations
9 thereunder. For this purpose, the following provisions apply:

10 (a) The payment of benefits under the retirement system
11 to any member shall be distributed to him or her not later
12 than the required beginning date, or be distributed to him or
13 her commencing not later than the required beginning date,
14 in accordance with regulations prescribed under Section
15 401(a)(9) of the Internal Revenue Code, over the life of the
16 member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent upon, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the retirement system has been distributed,
25 then the remaining portion of that interest shall be distributed
26 at least as rapidly as under the method of distribution being
27 used at the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the retirement
30 system shall be distributed by December 31 of the calendar
31 year containing the fifth anniversary of the member's death,
32 except as follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary or
35 over a period certain not greater than the life expectancy of
36 the beneficiary commencing on or before December 31 of the
37 calendar year immediately following the calendar year in
38 which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no later
41 than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or (ii)
46 December 31 of the calendar year following the calendar year
47 in which the spouse died.

§15-2A-6c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993.
3 Notwithstanding any provision of this article to the contrary

4 that would otherwise limit a distributee's election under this
5 system, 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: (i) 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; (ii) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (iii) 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 (iv) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in
30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code or (for taxable
33 years beginning before January 1, 2007) to a qualified trust
34 which is part of a defined contribution plan described in
35 Section 401(a) or (for taxable years beginning after
36 December 31, 2006) to a qualified trust or to an annuity
37 contract described in Section 403(a) or (b) of the Internal
38 Revenue Code that agrees to separately account for amounts
39 transferred (including interest or earnings thereon), including

separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: *Provided,* That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: *Provided, however,* That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's

surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.

§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of an employee solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue

Code; (ii) one or more rollovers described in Section 402 (c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided,* That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided,* That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds

52 required pursuant to this article for the reinstatement of
53 service credit previously forfeited on account of any refund
54 or withdrawal of contributions permitted in this article, as set
55 forth in Section 415(k)(3) of the Internal Revenue Code.

56 (3) Any contribution (other than by means of a rollover
57 or plan transfer) to purchase permissive service credit under
58 any provision of this article must satisfy the special limitation
59 rules described in Section 415(n) of the Internal Revenue
60 Code, and shall be automatically reduced, limited or required
61 to be paid over multiple years if necessary to ensure such
62 compliance. To the extent any such purchased permissive
63 service credit is qualified military service within the meaning
64 of Section 414(u) of the Internal Revenue Code, the
65 limitations of Section 415 of the Internal Revenue Code shall
66 be applied to such purchase as described in Section
67 414(u)(1)(B) of the Internal Revenue Code.

68 (4) For purposes of Section 415(b) of the Internal
69 Revenue Code, the annual benefit attributable to any rollover
70 contribution accepted pursuant to this section shall be
71 determined in accordance with Treasury Regulation
72 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
73 payments attributable to any rollover contribution provided
74 under the retirement system over the annual benefit so
75 determined shall be taken into account when applying the
76 accrued benefit limitations of Section 415(b) of the Internal
77 Revenue Code and section six-a of this article.

78 (b) Nothing in this section shall be construed as
79 permitting rollovers or transfers into this system or any other
80 system administered by the board other than as specified in
81 this section and no rollover or transfer shall be accepted into
82 the system in an amount greater than the amount required for
83 the purchase of permissive service credit or repayment of
84 withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this chapter.

§15-2A-8. Refunds to certain members upon discharge of resignation; deferred retirement.

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency is, at the written request of the member to the board, entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her base salary and paid into the fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reemployed by the agency shall not receive any prior service credit in the fund on account of former service. The employee may redeposit in the fund established by this article the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made.

(c) Every employee who completes ten years of service with the agency is eligible, upon separation of employment, to either withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the retirant and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article, subject to

28 reduction if necessary to comply with the maximum benefit
29 provisions of Section 415 of the Internal Revenue Code and
30 section six-a of this article. The retirant may choose, in lieu
31 of a life annuity, an annuity in a reduced amount payable
32 during the retirant's lifetime, with one half of the reduced
33 monthly amount paid to his or her surviving spouse for the
34 spouse's remaining lifetime after the death of the retirant.
35 Reduction of the monthly benefit amount shall be calculated
36 to be of equal actuarial value to the life annuity the retirant
37 could otherwise have chosen. Any retirant choosing to
38 receive the deferred annuity under this subsection is not
39 eligible to receive the annual annuity adjustment provided in
40 section seven of this article. A retiring member under the
41 provisions of this section may receive retirement annuity
42 payments on the first day of the month following his or her
43 attaining age sixty-two and upon receipt of the application for
44 retirement. The board shall promptly provide the member
45 with an explanation of his or her optional forms of retirement
46 benefits and, upon receipt of properly executed forms from
47 the agency and member, the board shall process the
48 member's request for and commence payments as soon as
49 administratively feasible.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.
§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.
§16-5V-12. Federal law maximum benefit limitations.
§16-5V-13. Federal law minimum required distributions.
§16-5V-14. Direct rollovers.
§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.
§16-5V-16. Retirement benefits.
§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

§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 July 1, 2012. The board
17 shall decrease the contribution rate to eight and one-half
18 percent once the plan funding reaches the seventy percent
19 support objective as of any later actuarial valuation date.

20 (2) Upon reaching the seventy-five percent actuarial
21 funded level, as of an actuarial valuation date, the board shall
22 increase the two and six-tenths percent to two and three-
23 quarter percent for the first twenty years of credited service.
24 The maximum benefit will also be increased from sixty-seven
25 percent to seventy percent.

26 (b) "Accumulated contributions" means the sum of all
27 retirement contributions deducted from the compensation of
28 a member, or paid on his or her behalf as a result of covered
29 employment, together with regular interest on the deducted
30 amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a

retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for "retirement" on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "County commission or political subdivision" has the meaning ascribed to it in this code.

(j) "Covered employment" means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided,* That the emergency medical services officer contributes to the fund created in this article the amount specified as the member's contribution in section eight of this article.

(k) "Credited service" means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(l) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(m) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Early retirement age" means age forty-five or over and completion of twenty years of regular contributory service.

(p) "Effective date" means January 1, 2008.

(q) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section twenty-two of this article multiplied by twelve. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.

(t) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section nineteen or twenty of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision and under this paragraph. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subdivision (p) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service;

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or

(4) Attainment of age sixty-two years and completion of five or more years of regular contributory service.

(z) "Political subdivision" means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided,* That any public corporation established under section four, article fifteen, chapter seven of this code is considered a political subdivision solely for the purposes of this article.

(aa) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

(bb) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(cc) "Plan year" means the twelve-month period commencing on January 1 of any designated year and ending December 31.

(dd) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ee) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(ff) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(gg) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment; or (3) for members who are covered under the Public Employees Retirement System, their service shall be recognized upon transfer of assets from the Public Employees Retirement System according to the provisions of section nine of this article. Prior service for members not covered under the Public Employees Retirement System shall be recognized only upon repayment of amounts covered under the provisions of section six of this article.

(hh) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(ii) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(jj) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(kk) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, "substantial gainful employment" is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(ll) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Year of Service
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section nineteen or twenty of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section eighteen of this article or section thirty, article ten, chapter five of this code shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section eighteen of this article or has prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Emergency Medical Services Retirement System. The purpose of this system is to provide for the orderly retirement of emergency medical services officers who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement system shall come into effect January 1, 2008: *Provided,* That at least seventy percent of all eligible emergency medical services officers and at least eighty-five percent of the eligible emergency medical services officers who are currently active members of the Public Employees

14 Retirement System elect to participate in this plan by
15 December 31, 2007. If this level of participation is not
16 reached, then all of the provisions of this article are void and
17 of no force and effect. All business of the system shall be
18 transacted in the name of the West Virginia Emergency
19 Medical Services Retirement System. The board shall
20 specify and adopt all actuarial assumptions for the plan at its
21 first meeting of every calendar year or as soon thereafter as
22 may be practicable, which assumptions shall become part of
23 the plan.

§16-5V-12. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section, to the
5 extent applicable to governmental plans (hereafter sometimes
6 referred to as the "415 limitation(s)" or "415 dollar
7 limitation(s)"), so that the annual benefit payable under this
8 system to a member shall not exceed those limitations. Any
9 annual benefit payable under this system shall be reduced or
10 limited if necessary to an amount which does not exceed
11 those limitations. The extent to which any annuity or other
12 annual benefit payable under this retirement system shall be
13 reduced as compared with the extent to which an annuity,
14 contributions or other benefits under any other defined
15 benefit plans or defined contribution plans required to be
16 taken into consideration under Section 415 of the Internal
17 Revenue Code shall be reduced, shall be proportional on a
18 percentage basis to the reductions made in such other plans
19 administered by the board and required to be so taken into
20 consideration under Section 415, unless a disproportionate
21 reduction is determined by the board to maximize the
22 aggregate benefits payable to the member. If the reduction is
23 under this retirement system, the board shall advise affected
24 members of any additional limitation on the annuities or
25 other annual benefit required by this section. For purposes of

26 the 415 limitations, the "limitation year" shall be the calendar
27 year. The 415 limitations are incorporated herein by
28 reference, except to the extent the following provisions may
29 modify the default provisions thereunder:

30 (a) The annual adjustment to the 415 dollar limitations
31 made by Section 415(d) of the Internal Revenue Code and the
32 regulations thereunder shall apply for each limitation year.
33 The annual adjustments to the dollar limitations under
34 Section 415(d) of the Internal Revenue Code which become
35 effective: (i) After a retirant's severance from employment
36 with the employer; or (ii) after the annuity starting date in the
37 case of a retirant who has already commenced receiving
38 benefits, will apply with respect to a retirant's annual benefit
39 in any limitation year. A retirant's annual benefit payable in
40 any limitation year from this retirement system shall in no
41 event be greater than the limit applicable at the annuity
42 starting date, as increased in subsequent years pursuant to
43 Section 415(d) of the Internal Revenue Code and the
44 regulations thereunder.

45 (b) For purposes of this section, the "annual benefit"
46 means a benefit that is payable annually in the form of a
47 straight life annuity. Except as provided below, where a
48 benefit is payable in a form other than a straight life annuity,
49 the benefit shall be adjusted to an actuarially equivalent
50 straight life annuity that begins at the same time as such other
51 form of benefit, using factors prescribed in the 415 limitation
52 regulations, before applying the 415 limitations. No actuarial
53 adjustment to the benefit shall be made for: (1) Survivor
54 benefits payable to a surviving spouse under a qualified joint
55 and survivor annuity to the extent such benefits would not be
56 payable if the member's benefit were paid in another form;
57 (2) benefits that are not directly related to retirement benefits
58 (such as a qualified disability benefit, preretirement
59 incidental death benefits, and post-retirement medical
60 benefits); or (3) the inclusion in the form of benefit of an
61 automatic benefit increase feature, provided the form of

62 benefit is not subject to Section 417(e)(3) of the Internal
63 Revenue Code and would otherwise satisfy the limitations of
64 this article, and the plan provides that the amount payable
65 under the form of benefit in any limitation year shall not
66 exceed the limits of this article applicable at the annuity
67 starting date, as increased in subsequent years pursuant to
68 Section 415(d) of the Internal Revenue Code. For this
69 purpose an automatic benefit increase feature is included in
70 a form of benefit if the form of benefit provides for
71 automatic, periodic increases to the benefits paid in that form.

72 (c) *Adjustment for benefit forms not subject to Section*
73 *417(e)(3).* -- The straight life annuity that is actuarially
74 equivalent to the member's form of benefit shall be
75 determined under this subsection if the form of the member's
76 benefit is either: (1) A nondecreasing annuity (other than a
77 straight life annuity) payable for a period of not less than the
78 life of the member (or, in the case of a qualified preretirement
79 survivor annuity, the life of the surviving spouse); or (2) an
80 annuity that decreases during the life of the member merely
81 because of: (i) The death of the survivor annuitant (but only
82 if the reduction is not below fifty percent of the benefit
83 payable before the death of the survivor annuitant); or (ii) the
84 cessation or reduction of Social Security supplements or
85 qualified disability payments (as defined in Section 411(a)(9)
86 of the Internal Revenue Code). The actuarially equivalent
87 straight life annuity is equal to the greater of: (I) The annual
88 amount of the straight life annuity (if any) payable to the
89 member under the plan commencing at the same annuity
90 starting date as the member's form of benefit; and (II) the
91 annual amount of the straight life annuity commencing at the
92 same annuity starting date that has the same actuarial present
93 value as the member's form of benefit, computed using a five
94 percent interest rate assumption and the applicable mortality
95 table defined in Treasury Regulation §1.417(e)-1(d)(2)
96 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
97 modifying the applicable provisions of Revenue Ruling
98 2001-62) for that annuity starting date.

99 (d) *Adjustment for benefit forms subject to Section*
100 *417(e)(3).* -- The straight life annuity that is actuarially
101 equivalent to the member's form of benefit shall be
102 determined under this subsection if the form of the member's
103 benefit is other than a benefit form described in subdivision
104 (c) of this section. In this case, the actuarially equivalent
105 straight life annuity shall be determined as follows: The
106 actuarially equivalent straight life annuity is equal to the
107 greatest of: (1) The annual amount of the straight life annuity
108 commencing at the same annuity starting date that has the
109 same actuarial present value as the member's form of benefit,
110 computed using the interest rate specified in this retirement
111 system and the mortality table (or other tabular factor)
112 specified in this retirement system for adjusting benefits in
113 the same form; (2) the annual amount of the straight life
114 annuity commencing at the same annuity starting date that
115 has the same actuarial present value as the member's form of
116 benefit, computed using a five and a half percent interest rate
117 assumption and the applicable mortality table defined in
118 Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
119 2001-62 or any subsequent Revenue Ruling modifying the
120 applicable provisions of Revenue Ruling 2001-62) for that
121 annuity starting date; and (3) the annual amount of the
122 straight life annuity commencing at the same annuity starting
123 date that has the same actuarial present value as the
124 member's form of benefit, computed using the applicable
125 interest rate defined in Treasury Regulation §1.417(e)-1(d)(3)
126 and the applicable mortality table defined in Treasury
127 Regulation §1.417(e)-1(d)(2) (the mortality table specified in
128 Revenue Ruling 2001-62 or any subsequent Revenue Ruling
129 modifying the applicable provisions of Revenue Ruling
130 2001-62), divided by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in paragraphs (2) and (3) of this
133 subdivision, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation

135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in paragraph (1) of
146 this subdivision shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified
148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the
151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in paragraph (1) of
161 this subdivision shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement system (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subdivision (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall
183 not cause the maximum annual benefit provided to a member
184 to be less than the member's accrued benefit as of December
185 31, 2008 (the end of the limitation year that is immediately
186 prior to the effective date of the final regulations for this
187 retirement system as defined in Treasury Regulation
188 §1.415(a)-1(g)(2)), under provisions of the retirement system
189 that were both adopted and in effect before April 5, 2007,
190 provided that such provisions satisfied the applicable
191 requirements of statutory provisions, regulations and other
192 published guidance relating to Section 415 of the Internal
193 Revenue Code in effect as of December 31, 2008, as
194 described in Treasury Regulation §1.415(a)-1(g)(4). If
195 additional benefits are accrued for a member under this
196 retirement system after January 1, 2009, then the sum of the
197 benefits described under the first sentence of this subdivision
198 and benefits accrued for a member after January 1, 2009,
199 must satisfy the requirements of Section 415, taking into
200 account all applicable requirements of the final 415 Treasury
201 Regulations.

§16-5V-13. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence

3 over any inconsistent provisions of this plan. This section
4 applies to plan years beginning after December 31, 1986.
5 Notwithstanding anything in the plan to the contrary, the
6 payment of benefits under this article shall be determined and
7 made in accordance with Section 401(a)(9) of the Internal
8 Revenue Code and its regulations. For this purpose, the
9 following provisions apply:

10 (a) The payment of benefits under the plan to any
11 member shall be distributed to him or her not later than the
12 required beginning date, or be distributed to him or her
13 commencing not later than the required beginning date, in
14 accordance with regulations prescribed under Section
15 401(a)(9) of the Internal Revenue Code, over the life of the
16 member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent upon, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the plan has been distributed, then the
25 remaining portion of that interest shall be distributed at least
26 as rapidly as under the method of distribution being used at
27 the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the plan shall be
30 distributed by December 31 of the calendar year containing
31 the fifth anniversary of the member's death, except as
32 follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary or
35 over a period certain not greater than the life expectancy of
36 the beneficiary, commencing on or before December 31 of

the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§16-5V-14. Direct rollovers.

Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section

401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code (including a Roth IRA described in Section 408A of the Internal Revenue Code), or to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable.

(2) "Eligible retirement plan" means an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, a Roth IRA described in Section 408A of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: *Provided,* That in the case of an eligible rollover distribution to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

58 (3) "Distributee" means an employee or former
59 employee. In addition, the employee's or former employee's
60 surviving spouse and the employee's or former employee's
61 spouse or former spouse who is the alternate payee under a
62 qualified domestic relations order, as defined in Section
63 414(p) of the Internal Revenue Code with respect to
64 governmental plans, are distributees with regard to the
65 interest of the spouse or former spouse. The term
66 "distributee" also includes a designated beneficiary (other
67 than a surviving spouse) as such term is defined in Section
68 402(c)(11) of the Internal Revenue Code.

69 (4) "Direct rollover" means a payment by the plan to the
70 eligible retirement plan.

§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) Notwithstanding any provision of this article to the
2 contrary that would otherwise prohibit or limit rollovers and
3 plan transfers to this system, the plan shall accept the
4 following rollovers and plan transfers on behalf of a member
5 solely for the purpose of purchasing permissive service
6 credit, in whole or in part, as otherwise provided in this
7 article or for the repayment of withdrawn or refunded
8 contributions, in whole and in part, with respect to a previous
9 forfeiture of service credit as otherwise provided in this
10 article: (A) One or more rollovers within the meaning of
11 Section 408(d)(3) of the Internal Revenue Code from an
12 individual retirement account described in Section 408(a) of
13 the Internal Revenue Code or from an individual retirement
14 annuity described in Section 408(b) of the Internal Revenue
15 Code; (B) one or more rollovers described in Section 402(c)
16 of the Internal Revenue Code from a retirement plan that is
17 qualified under Section 401(a) of the Internal Revenue Code
18 or from a plan described in Section 403(b) of the Internal
19 Revenue Code; (C) one or more rollovers described in
20 Section 457(e)(16) of the Internal Revenue Code from a

21 governmental plan described in Section 457 of the Internal
22 Revenue Code; or (D) direct trustee-to-trustee transfers or
23 rollovers from a plan that is qualified under Section 401(a) of
24 the Internal Revenue Code, from a plan described in Section
25 403(b) of the Internal Revenue Code or from a governmental
26 plan described in Section 457 of the Internal Revenue Code:
27 *Provided,* That any rollovers or transfers pursuant to this
28 section shall be accepted by the system only if made in cash
29 or other asset permitted by the board and only in accordance
30 with such policies, practices and procedures established by
31 the board from time to time. For purposes of this article, the
32 following definitions and limitations apply:

33 (1) "Permissive service credit" means service credit
34 which is permitted to be purchased under the terms of the
35 retirement system by voluntary contributions in an amount
36 which does not exceed the amount necessary to fund the
37 benefit attributable to the period of service for which the
38 service credit is being purchased, all as defined in Section
39 415(n)(3)(A) of the Internal Revenue Code: *Provided,* That
40 no more than five years of "nonqualified service credit", as
41 defined in Section 415(n)(3)(C) of the Internal Revenue
42 Code, may be included in the permissive service credit
43 allowed to be purchased (other than by means of a rollover or
44 plan transfer), and no nonqualified service credit may be
45 included in any such purchase (other than by means of a
46 rollover or plan transfer) before the member has at least five
47 years of participation in the retirement system.

48 (2) "Repayment of withdrawn or refunded contributions"
49 means the payment into the retirement system of the funds
50 required pursuant to this article for the reinstatement of
51 service credit previously forfeited on account of any refund
52 or withdrawal of contributions permitted in this article, as set
53 forth in Section 415(k)(3) of the Internal Revenue Code.

54 (3) Any contribution (other than by means of a rollover
55 or plan transfer) to purchase permissive service credit under

any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twelve of this article.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§16-5V-16. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based upon the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twelve of this article. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) *Normal retirement.* -- A member whose annuity starting date is the date the member attains normal retirement age, is entitled to his or her accrued benefit without adjustment for age at commencement.

(b) *Early retirement.* -- A member who ceases covered employment and has attained early retirement age while in covered employment may elect in writing by completion of an application for retirement required by and submitted to the board, to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment and submits the proper application to the board. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) *Late retirement.* -- A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form without adjustment for age at commencement, which is the benefit to which he or she is entitled according to his or her accrued benefit based on his or her final average salary and credited service at the time of his or her actual retirement and following the completion of an application for retirement as required by the board.

(d) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System unless following his or her return to covered employment and active participation in this

plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

The repayment authorized by this subsection shall be made in a lump sum within sixty months of the emergency medical services officer's reemployment in covered employment or, if later, within sixty months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b), section six of this article may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nonemergency medical services officer service withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Every member who completes sixty months of regular contributory service may, upon cessation of covered employment, either withdraw his or her accumulated contributions in accordance with this section or choose not to withdraw his or her accumulated contribution and receive retirement income payments, if eligible, upon attaining early or normal retirement age.

(e) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

CHAPTER 18. EDUCATION.

Article
7A. State Teachers Retirement System.
7B. Teachers Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.
§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.
§18-7A-26. Computation of annuities.
§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.
§18-7A-28a. Federal law maximum benefit limitations.
§18-7A-28b. Federal law minimum required distributions.
§18-7A-28c. Direct rollovers.
§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§18-7A-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made: *Provided,* That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

(7) "Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

(8) "Deposit" means a voluntary payment to his or her account by a member.

(9) "Employer" means the agency of and within the state which has employed or employs a member.

(10) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.

(12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(14) "Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(15) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(17) "New entrant" means a teacher who is not a present teacher.

(18) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code: *Provided,* That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) "Present member" means a present teacher who is a member of the retirement system.

(21) "Present teacher" means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(27) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(28) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(29) "Retirement system" means the State Teachers Retirement System established by this article.

(30) "Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) the

executive director of the retirement board; (G) members of the research, extension, administrative or library staffs of the public schools; (H) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (I) employees of the State Board of Education who are performing services of an educational nature; (J) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (K) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; (L) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State Teachers Retirement System provided in this article.

(31) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of seventy years shall be considered to be seventy years.

§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.

(a) At the end of each month every member of the retirement system shall contribute six percent of that 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 State
8 Teachers Retirement System at the end of each calendar
9 month in arrears and shall be paid not later than fifteen days
10 following the end of the calendar month. Each remittance
11 shall be accompanied by a detailed summary of the sums
12 withheld from the compensation of each member for that
13 month on forms, either paper or electronic, provided by the
14 State Teachers Retirement System for that purpose.

15 (b) Annually, the contributions of each member shall be
16 credited to the member's account in the State Teachers
17 Retirement System Fund. The contributions shall be deducted
18 from the salaries of the members as prescribed in this section
19 and every member shall be considered to have given consent
20 to the deductions. No deductions, however, shall be made
21 from 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 July 1, 1994, the rate shall be seven and
28 one-half percent; beginning on July 1, 1995, the rate shall be
29 nine percent; beginning on July 1, 1996, the rate shall be ten
30 and one-half percent; beginning on July 1, 1997, the rate shall
31 be twelve percent; beginning on July 1, 1998, the rate shall
32 be thirteen and one-half percent; and beginning on July 1,
33 1999, and thereafter, the rate shall be fifteen percent:
34 *Provided,* That the rate shall be seven and one-half percent
35 for any individual who becomes a member of the State
36 Teachers Retirement System for the first time on or after July
37 1, 2005, or any individual who becomes a member of the

State Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing the contributor's date of birth and other data needed by the retirement board.

(f) If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule, Retirement Board Reinstatement Interest, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

70 (g) Notwithstanding any other provisions of this article,
71 forfeitures under the retirement system shall not be applied
72 to increase the benefits any member would otherwise receive
73 under the retirement system.

§18-7A-26. Computation of annuities.

1 (a) Annuitants whose annuities were approved by the
2 retirement board effective before July 1, 1980, shall be paid
3 the annuities which were approved by the retirement board.

4 (b) Annuities approved by the board effective after June
5 30, 1980, shall be computed as provided in this section.

6 (c) Upon establishment of eligibility for a retirement
7 allowance, a member shall be granted an annuity which shall
8 be the sum of the following, subject to reduction if necessary
9 to comply with the maximum benefit provisions of Section
10 415 of the Internal Revenue Code and section twenty-eight-a
11 of this article:

12 (1) Two percent of the member's average salary
13 multiplied by his or her total service credit as a teacher. In
14 this subdivision "average salary" means the average of the
15 highest annual salaries received by the member during any
16 five years contained within his or her last fifteen years of
17 total service credit: *Provided,* That the highest annual salary
18 used in this calculation for certain members employed by the
19 West Virginia Higher Education Policy Commission under
20 its control shall be $4,800, as provided by section fourteen-a
21 of this article;

22 (2) The actuarial equivalent of the voluntary deposits of
23 the member in his or her individual account up to the time of
24 his or her retirement, with regular interest.

(d) The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the board.

(e) Upon the death of an annuitant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse who was named as the member's survivor, a retirant may elect an annuity option approved by the board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be considered a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on December 18. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

(g) In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the board received the new data.

(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July 1, 1941, is eligible for prior service credit and for prior service pensions as prescribed in this section.

§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retired members who are credited with twenty or more years of total service; that such program constitutes a public purpose; and that the exclusion of total service for certain employees of institutions of higher education is a reasonable and equitable exclusion for purposes of determining eligibility for such minimum benefits.

If the retirement annuity of a retired member (or if applicable, a spouse thereof) with at least twenty years of total service is less than $500 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for any such retired member shall be increased to $500 per month: *Provided,* That any year of service while an employee of an institution of higher education shall not be taken into account for purposes of this section if his or her salary is capped under the retirement system at $4,800 per year pursuant to section fourteen-a of this article.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: *Provided,* That the minimum benefit provided herein shall be subject to any limitations thereon under §415 of the Internal Revenue Code

27 of 1986, as the same may be amended, and section twenty-
28 eight-a of this article.

29 Any minimum benefit conferred herein shall not be
30 retroactive to the time of retirement and shall apply only to
31 members who have retired prior to the effective date of this
32 section, or, if applicable, to beneficiaries receiving benefits
33 under the retirement system prior to the effective date.

34 The minimum benefit provided herein shall be subject to
35 a recommendation by the Governor for such minimum
36 benefit through the delivery of an executive message to the
37 Legislature and an appropriation by the Legislature for such
38 minimum benefit, such appropriation to be made over a
39 continuous six-year period following the effective date of this
40 section.

§18-7A-28a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system in
3 compliance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the
5 extent applicable to governmental plans (hereafter sometimes
6 referred to as the "415 limitation(s)" or "415 dollar
7 limitation(s)"), so that the annual benefit payable under this
8 system to a member shall not exceed those limitations. Any
9 annual benefit payable under this system shall be reduced or
10 limited if necessary to an amount which does not exceed
11 those limitations. The extent to which any annuity or other
12 annual benefit payable under this retirement system shall be
13 reduced, as compared with the extent to which an annuity,
14 contributions or other benefits under any other defined
15 benefit plans or defined contribution plans required to be
16 taken into consideration under Section 415 of the Internal
17 Revenue Code shall be reduced, shall be proportional on a
18 percentage basis to the reductions made in such other plans

19 administered by the board and required to be so taken into
20 consideration under Section 415, unless a disproportionate
21 reduction is determined by the board to maximize the
22 aggregate benefits payable to the member. If the reduction is
23 under this retirement system, the board shall advise affected
24 members of any additional limitation on the annuities or
25 other annual benefit required by this section. For purposes of
26 the 415 limitations, the "limitation year" shall be the calendar
27 year. The 415 limitations are incorporated herein by
28 reference, except to the extent the following provisions may
29 modify the default provisions thereunder:

30 (a) The annual adjustment to the 415 dollar limitations
31 made by Section 415(d) of the Internal Revenue Code and the
32 regulations thereunder shall apply for each limitation year.
33 The annual adjustments to the dollar limitations under
34 Section 415(d) of the Internal Revenue Code which become
35 effective: (i) After a retirant's severance from employment
36 with the employer; or (ii) after the annuity starting date in the
37 case of a retirant who has already commenced receiving
38 benefits, will apply with respect to a retirant's annual benefit
39 in any limitation year. A retirant's annual benefit payable in
40 any limitation year from this retirement system shall in no
41 event be greater than the limit applicable at the annuity
42 starting date, as increased in subsequent years pursuant to
43 Section 415(d) of the Internal Revenue Code and the
44 regulations thereunder.

45 (b) For purposes of this section, the "annual benefit"
46 means a benefit that is payable annually in the form of a
47 straight life annuity. Except as provided below, where a
48 benefit is payable in a form other than a straight life annuity,
49 the benefit shall be adjusted to an actuarially equivalent
50 straight life annuity that begins at the same time as such other
51 form of benefit, using factors prescribed in the 415 limitation
52 regulations, before applying the 415 limitations. No actuarial
53 adjustment to the benefit shall be made for: (1) Survivor
54 benefits payable to a surviving spouse under a qualified joint

55 and survivor annuity to the extent such benefits would not be
56 payable if the member's benefit were paid in another form;
57 (2) benefits that are not directly related to retirement benefits
58 (such as a qualified disability benefit, preretirement
59 incidental death benefits and post-retirement medical
60 benefits); or (3) the inclusion in the form of benefit of an
61 automatic benefit increase feature, provided the form of
62 benefit is not subject to Section 417(e)(3) of the Internal
63 Revenue Code and would otherwise satisfy the limitations of
64 this article, and the plan provides that the amount payable
65 under the form of benefit in any limitation year shall not
66 exceed the limits of this article applicable at the annuity
67 starting date, as increased in subsequent years pursuant to
68 Section 415(d) of the Internal Revenue Code. For this
69 purpose an automatic benefit increase feature is included in
70 a form of benefit if the form of benefit provides for
71 automatic, periodic increases to the benefits paid in that form.

72 (c) *Adjustment for benefit forms not subject to Section*
73 *417(e)(3).* -- The straight life annuity that is actuarially
74 equivalent to the member's form of benefit shall be
75 determined under this subsection if the form of the member's
76 benefit is either: (1) A nondecreasing annuity (other than a
77 straight life annuity) payable for a period of not less than the
78 life of the member (or, in the case of a qualified preretirement
79 survivor annuity, the life of the surviving spouse); or (2) an
80 annuity that decreases during the life of the member merely
81 because of: (i) The death of the survivor annuitant (but only
82 if the reduction is not below fifty percent of the benefit
83 payable before the death of the survivor annuitant); or (ii) the
84 cessation or reduction of Social Security supplements or
85 qualified disability payments (as defined in Section 411(a)(9)
86 of the Internal Revenue Code). The actuarially equivalent
87 straight life annuity is equal to the greater of: (I) The annual
88 amount of the straight life annuity (if any) payable to the
89 member under the plan commencing at the same annuity
90 starting date as the member's form of benefit; and (II) the
91 annual amount of the straight life annuity commencing at the

92 same annuity starting date that has the same actuarial present
93 value as the member's form of benefit, computed using a five
94 percent interest rate assumption and the applicable mortality
95 table defined in Treasury Regulation §1.417(e)-1(d)(2)
96 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
97 modifying the applicable provisions of Revenue Ruling
98 2001-62) for that annuity starting date.

99 (d) *Adjustment for benefit forms subject to Section*
100 *417(e)(3).* -- The straight life annuity that is actuarially
101 equivalent to the member's form of benefit shall be
102 determined under this subsection if the form of the member's
103 benefit is other than a benefit form described in subdivision
104 (c) of this section. In this case, the actuarially equivalent
105 straight life annuity shall be determined as follows: The
106 actuarially equivalent straight life annuity is equal to the
107 greatest of: (1) The annual amount of the straight life annuity
108 commencing at the same annuity starting date that has the
109 same actuarial present value as the member's form of benefit,
110 computed using the interest rate specified in this retirement
111 system and the mortality table (or other tabular factor)
112 specified in this retirement system for adjusting benefits in
113 the same form; (2) the annual amount of the straight life
114 annuity commencing at the same annuity starting date that
115 has the same actuarial present value as the member's form of
116 benefit, computed using a five and a half percent interest rate
117 assumption and the applicable mortality table defined in
118 Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
119 2001-62 or any subsequent Revenue Ruling modifying the
120 applicable provisions of Revenue Ruling 2001-62) for that
121 annuity starting date; and (3) the annual amount of the
122 straight life annuity commencing at the same annuity starting
123 date that has the same actuarial present value as the
124 member's form of benefit, computed using the applicable
125 interest rate defined in Treasury Regulation §1.417(e)-1(d)(3)
126 and the applicable mortality table defined in Treasury
127 Regulation §1.417(e)-1(d)(2) (the mortality table specified in

128 Revenue Ruling 2001-62 or any subsequent Revenue Ruling
129 modifying the applicable provisions of Revenue Ruling
130 2001-62), divided by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in paragraphs (2) and (3) of this
133 subdivision, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation
135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in paragraph (1) of
146 this subdivision shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified
148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the
151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in paragraph (1) of
161 this subdivision shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement system (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subdivision (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall not
183 cause the maximum annual benefit provided to a member to be
184 less than the member's accrued benefit as of December 31, 2008
185 (the end of the limitation year that is immediately prior to the
186 effective date of the final regulations for this retirement system
187 as defined in Treasury Regulation §1.415(a)-1(g)(2)), under
188 provisions of the retirement system that were both adopted and
189 in effect before April 5, 2007, provided that such provisions
190 satisfied the applicable requirements of statutory provisions,
191 regulations and other published guidance relating to Section 415
192 of the Internal Revenue Code in effect as of December 31, 2008,
193 as described in Treasury Regulation §1.415(a)-1(g)(4). If

194 additional benefits are accrued for a member under this
195 retirement system after January 1, 2009, then the sum of the
196 benefits described under the first sentence of this subdivision
197 and benefits accrued for a member after January 1, 2009, must
198 satisfy the requirements of Section 415, taking into account all
199 applicable requirements of the final 415 Treasury Regulations.

§18-7A-28b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this retirement system.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the retirement system
6 to the contrary, the payment of benefits under this article
7 shall be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the regulations
9 thereunder. For this purpose, the following provisions apply:

10 (a) The payment of benefits under the retirement system
11 to any member shall be distributed to him or her not later
12 than the required beginning date, or be distributed to him or
13 her commencing not later than the required beginning date,
14 in accordance with regulations prescribed under Section
15 401(a)(9) of the Internal Revenue Code, over the life of the
16 member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent upon, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the retirement system has been distributed,
25 then the remaining portion of that interest shall be distributed

at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall not be earlier than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§18-7A-28c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible 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. For distributions after December 31, 2001,
27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in
30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code, or (for taxable
33 years beginning before January 1, 2007) to a qualified trust
34 which is part of a defined contribution plan described in
35 Section 401(a) or (for taxable years beginning after
36 December 31, 2006) to a qualified trust or to an annuity
37 contract described in Section 403(a) or (b) of the Internal
38 Revenue Code that agrees to separately account for amounts
39 transferred (including interest or earnings thereon), including
40 separately accounting for the portion of the distribution
41 which is includable in gross income and the portion of the
42 distribution which is not so includable, or (for taxable years

beginning after December 31, 2007) to a Roth IRA described in Section 408A the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: *Provided,* That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: *Provided, however,* That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a

78 qualified domestic relations order, as defined in Section
79 414(p) of the Internal Revenue Code, as applicable to
80 governmental plans, are distributees with regard to the
81 interest of the spouse or former spouse. For distributions
82 after December 31, 2007, "distributee" also includes a
83 designated beneficiary (other than a surviving spouse) as
84 such term is defined in Section 402(c)(11) of the Internal
85 Revenue Code.

86 (4) "Direct rollover" means a payment by the system to
87 the eligible retirement plan.

88 (b) Nothing in this section may be construed as
89 permitting rollovers into this system or any other retirement
90 system administered by the board.

§18-7A-28d. 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 January 1, 2002.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise prohibit or limit rollovers and plan
5 transfers to this system, the retirement system shall accept the
6 following rollovers and plan transfers on behalf of a member
7 solely for the purpose of purchasing permissive service
8 credit, in whole or in part, as otherwise provided in this
9 article or for the repayment of withdrawn or refunded
10 contributions, in whole or in part, with respect to a previous
11 forfeiture of service credit as otherwise provided in this
12 article: (i) One or more rollovers within the meaning of
13 Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of
15 the Internal Revenue Code or from an individual retirement
16 annuity described in Section 408(b) of the Internal Revenue
17 Code; (ii) one or more rollovers described in Section 402(c)
18 of the Internal Revenue Code from a retirement plan that is

qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided,* That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided,* That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund

or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twenty-eight-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of

87 withdrawn or refunded contributions except as otherwise
88 permitted in this article.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.
§18-7B-12a. Federal minimum required distributions.
§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.
§18-7B-13b. Direct rollovers.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Annual addition" means, for purposes of the
4 limitations under Section 415(c) of the Internal Revenue
5 Code, the sum credited to a member's account for any
6 limitation year of: (A) Employer contributions; (B) employee
7 contributions; and (C) forfeitures. Repayment of cashouts or
8 contributions as described in Section 415(k)(3) of the Internal
9 Revenue Code, rollover contributions and picked-up
10 employee contributions to a defined benefit plan shall not be
11 treated as annual additions, consistent with the requirements
12 of Treasury Regulation §1.415(c)-1.

13 (2) "Annuity account" or "annuity" means an account
14 established for each member to record the deposit of member
15 contributions and employer contributions and interest,
16 dividends or other accumulations credited on behalf of the
17 member;

18 (3) "Compensation" means the full compensation actually
19 received by members for service whether or not a part of the
20 compensation is received from other funds, federal or
21 otherwise, than those provided by the state or its
22 subdivisions: *Provided,* That annual compensation for
23 determining contributions during any determination period

24 may not exceed the maximum compensation allowed as
25 adjusted for cost-of-living in accordance with section seven,
26 article ten-d, chapter five of this code and Section 401(a)(17)
27 of the Internal Revenue Code: *Provided, however,* That
28 solely for purposes of applying the limitations of Section 415
29 of the Internal Revenue Code to any annual addition,
30 "compensation" shall have the meaning given it in subsection
31 (d), section thirteen of this article.

32 (4) "Consolidated board" or "board" means the
33 Consolidated Public Retirement Board created and
34 established pursuant to article ten-d, chapter five of this code;

35 (5) "Defined contribution system" or "system" means the
36 Teachers' Defined Contribution Retirement System created
37 and established by this article;

38 (6) "Employer" means the agency of and within the State
39 of West Virginia which has employed or employs a member;

40 (7) "Employer contribution" means an amount deposited
41 into the member's individual annuity account on a periodic
42 basis coinciding with the employee's regular pay period by
43 an employer from its own funds;

44 (8) "Existing employer" means any employer who
45 employed or employs a member of the existing retirement
46 system;

47 (9) "Existing retirement system" means the State
48 Teachers Retirement System established in article seven-a of
49 this chapter;

50 (10) "Internal Revenue Code" means the Internal
51 Revenue Code of 1986, as it has been amended;

(11) "Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article;

(12) "Member contribution" means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System;

(13) "Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided,* That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however,* That for employees hired on or after July 1, 2005, permanent, total disability means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(14) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending on the following June 30;

(15) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;

(16) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(17) "Required beginning date" means April 1 of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years;

(18) "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(19) "Year of employment service" means employment for at least ten months, a month being defined as twenty employment days: *Provided,* That no more than one year of service may be accumulated in any twelve-month period.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder, including without limitation the incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least

as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half years; or

(B) The earlier of: (i) December 31 of the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

(d) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

§18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member's account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code (as such limitations are adjusted for cost of living in accordance with Section 415(d) of the Internal Revenue Code) and Treasury Regulations thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 annual addition limitation(s)") so that an annual addition made under this system shall not exceed those limitations. Any annual addition made under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which an annual addition under this retirement system shall be reduced, as compared to the extent which an annual addition under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate

36 reduction is determined by the board to maximize the
37 aggregate benefits payable to the member. If the reduction is
38 under this retirement system, the board shall advise affected
39 members of any additional limitation on the annual addition
40 required by this section. The 415 limitations shall apply as
41 if the total annual additions under all defined contribution
42 plans in which a member has been a member were payable
43 from one plan for any member who has at any time been a
44 member in any other defined contribution plan maintained by
45 the member's participating employer. For purposes of the
46 415 limitations, the "limitation year" shall be the calendar
47 year.

48 (d) Solely for purposes of calculating and applying the
49 415 limitations, a member's compensation for a limitation
50 year is defined to be wages within the meaning of Section
51 3401(a) of the Internal Revenue Code (including amounts
52 that would be included in wages but for an election under
53 Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or
54 457(b) of the Internal Revenue Code), plus all other
55 payments of compensation to a member by a participating
56 employer (in the course of the employer's trade or business)
57 for which the employer is required to furnish the employee a
58 written statement under Sections 6041(d), 6051(a)(3) and
59 6052 of the Internal Revenue Code, and determined without
60 regard to any rules that limit the remuneration included in
61 wages based upon the nature or location of employment or
62 services performed. In addition:

63 (1) For limitation years beginning on or after January 1,
64 2009, compensation for a limitation year shall also include:

65 (A) Compensation paid by the later of two and one-half
66 months after a member's severance from employment with
67 the employer or the end of the limitation year that includes
68 the date of the member's severance from employment with
69 the employer maintaining the plan, if the payment is regular
70 compensation for services during the member's regular

working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

(B) Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), for the limitation year to which the back pay relates, but only to the extent the back pay represents wages and compensation that would otherwise be included in compensation under this definition; and

(C) For an employee in qualified military service (within the meaning of Section 414(u)(5) of the Internal Revenue Code), compensation such employee would have received during such period if the employee were not in qualified military service, to the extent required pursuant to Section 414(u)(7) of the Internal Revenue Code.

(2) For limitation years beginning on or after January 1, 2009, compensation for a limitation year may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

§18-7B-13b. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in

9 a direct 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 such 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; (iv) any hardship distribution described
26 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code;
27 and (v) any other distribution or distributions reasonably
28 expected to total less than $200 during a year. For
29 distributions after December 31, 2001, a portion of a
30 distribution shall not fail to be an eligible rollover
31 distribution merely because the portion consists of after-tax
32 employee contributions which are not includable in gross
33 income. However, this portion may be paid only to an
34 individual retirement account or annuity described in Section
35 408(a) or (b) of the Internal Revenue Code, or (for taxable
36 years beginning before January 1, 2007) to a qualified trust
37 which is part of a defined contribution plan described in
38 Section 401(a) or(for taxable years beginning after December
39 31, 2006) to a qualified trust or to an annuity contract
40 described in Section 403(a) or (b) of the Internal Revenue
41 Code that agrees to separately account for amounts
42 transferred (including interest or earnings thereon), including
43 separately accounting for the portion of the distribution
44 which is includable in gross income and the portion of the

45 distribution which is not so includable, or (for taxable years
46 beginning after December 31, 2007) to a Roth IRA described
47 in Section 408A of the Internal Revenue Code.

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the Internal
50 Revenue Code, an individual retirement annuity described in
51 Section 408(b) of the Internal Revenue Code, an annuity plan
52 described in Section 403(a) of the Internal Revenue Code or
53 a qualified plan described in Section 401(a) of the Internal
54 Revenue Code that accepts the distributee's eligible rollover
55 distribution: *Provided,* That in the case of an eligible rollover
56 distribution prior to January 1, 2002, to the surviving spouse,
57 an eligible retirement plan is limited to an individual
58 retirement account or individual retirement annuity. For
59 distributions after December 31, 2001, an eligible retirement
60 plan shall also mean an annuity contract described in Section
61 403(b) of the Internal Revenue Code and an eligible plan
62 under Section 457(b) of the Internal Revenue Code which is
63 maintained by a state, political subdivision of a state or any
64 agency or instrumentality of a state or political subdivision of
65 a state and which agrees to separately account for amounts
66 transferred into the plan from this system. For distributions
67 after December 31, 2007, an eligible retirement plan also
68 means a Roth IRA described in Section 408A of the Internal
69 Revenue Code: *Provided, however,* That in the case of an
70 eligible rollover distribution after December 31, 2007, to a
71 designated beneficiary (other than a surviving spouse) as
72 such term is defined in Section 402(c)(11) of the Internal
73 Revenue Code, an eligible retirement plan is limited to an
74 individual retirement account or individual retirement annuity
75 which meets the conditions of Section 402(c)(11) of the
76 Internal Revenue Code.

77 (3) "Distributee" means an employee or former
78 employee. In addition, the employee's or former employee's
79 surviving spouse and the employee's or former employee's

80 spouse or former spouse who is the alternate payee under a
81 qualified domestic relations order, as defined in Section
82 414(p) of the Internal Revenue Code with respect to
83 governmental plans, are distributees with regard to the
84 interest of the spouse or former spouse. For distributions
85 after December 31, 2007, "distributee" also includes a
86 designated beneficiary (other than a surviving spouse) as
87 such term is defined in Section 402(c)(11) of the Internal
88 Revenue Code.

89 (4) "Direct rollover" means a payment by the system to
90 the eligible retirement plan.

91 (b) Nothing in this section may be construed as
92 permitting rollovers into this retirement system or any other
93 retirement system administered by the board.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.
§51-9-12a. Federal law maximum benefit limitations.
§51-9-12b. Federal minimum required distributions.
§51-9-12c. Direct rollovers.

§51-9-1a. Definitions.

1 (a) As used in this article, the term "judge", "judge of any
2 court of record" or "judge of any court of record of this state"
3 means, refers to and includes judges of the several circuit
4 courts and justices of the Supreme Court of Appeals. For
5 purposes of this article, the terms do not mean, refer to or
6 include family court judges.

7 (b) "Actuarially equivalent" or "of equal actuarial value"
8 means a benefit of equal value computed upon the basis of
9 the mortality table and interest rates as set and adopted by the

retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(e) "Final average salary" means the average of the highest thirty-six consecutive months' compensation received by the member as a judge of any court of record of this state.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(g) "Member" means a judge participating in this system.

(h) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(i) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which the member retires or otherwise separates from covered employment.

(j) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary,

the provisions of this article are applicable only to circuit judges and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System.

§51-9-12a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by

reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of

64 this article, and the plan provides that the amount payable
65 under the form of benefit in any limitation year shall not
66 exceed the limits of this article applicable at the annuity
67 starting date, as increased in subsequent years pursuant to
68 Section 415(d) of the Internal Revenue Code. For this
69 purpose an automatic benefit increase feature is included in
70 a form of benefit if the form of benefit provides for
71 automatic, periodic increases to the benefits paid in that form.

72 (c) *Adjustment for benefit forms not subject to Section*
73 *417(e)(3).* -- The straight life annuity that is actuarially
74 equivalent to the member's form of benefit shall be
75 determined under this subsection if the form of the member's
76 benefit is either: (1) A nondecreasing annuity (other than a
77 straight life annuity) payable for a period of not less than the
78 life of the member (or, in the case of a qualified preretirement
79 survivor annuity, the life of the surviving spouse); or (2) an
80 annuity that decreases during the life of the member merely
81 because of: (i) The death of the survivor annuitant (but only
82 if the reduction is not below fifty percent of the benefit
83 payable before the death of the survivor annuitant); or (ii) the
84 cessation or reduction of Social Security supplements or
85 qualified disability payments (as defined in Section 411(a)(9)
86 of the Internal Revenue Code). The actuarially equivalent
87 straight life annuity is equal to the greater of: (I) The annual
88 amount of the straight life annuity (if any) payable to the
89 member under the plan commencing at the same annuity
90 starting date as the member's form of benefit; and (II) the
91 annual amount of the straight life annuity commencing at the
92 same annuity starting date that has the same actuarial present
93 value as the member's form of benefit, computed using a five
94 percent interest rate assumption and the applicable mortality
95 table defined in Treasury Regulation §1.417(e)-1(d)(2)
96 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling
97 modifying the applicable provisions of Revenue Ruling
98 2001-62) for that annuity starting date.

99 (d) *Adjustment for benefit forms subject to Section*
100 *417(e)(3).* -- The straight life annuity that is actuarially
101 equivalent to the member's form of benefit shall be
102 determined under this subsection if the form of the member's
103 benefit is other than a benefit form described in subdivision
104 (c) of this section. The actuarially equivalent straight life
105 annuity shall be determined as follows: The actuarially
106 equivalent straight life annuity is equal to the greatest of: (1)
107 The annual amount of the straight life annuity commencing
108 at the same annuity starting date that has the same actuarial
109 present value as the member's form of benefit, computed
110 using the interest rate specified in this retirement system and
111 the mortality table (or other tabular factor) specified in this
112 retirement system for adjusting benefits in the same form; (2)
113 the annual amount of the straight life annuity commencing at
114 the same annuity starting date that has the same actuarial
115 present value as the member's form of benefit, computed
116 using a five and a half percent interest rate assumption and
117 the applicable mortality table defined in Treasury Regulation
118 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any
119 subsequent Revenue Ruling modifying the applicable
120 provisions of Revenue Ruling 2001-62) for that annuity
121 starting date; and (3) the annual amount of the straight life
122 annuity commencing at the same annuity starting date that
123 has the same actuarial present value as the member's form of
124 benefit, computed using the applicable interest rate defined
125 in Treasury Regulation §1.417(e)-1(d)(3) and the applicable
126 mortality table defined in Treasury Regulation §1.417(e)-
127 1(d)(2) (the mortality table specified in Revenue Ruling
128 2001-62 or any subsequent Revenue Ruling modifying the
129 applicable provisions of Revenue Ruling 2001-62), divided
130 by 1.05.

131 (e) *Benefits payable prior to age sixty-two.* --

132 (1) Except as provided in paragraphs (2) and (3) of this
133 subdivision, if the member's retirement benefits become
134 payable before age sixty-two, the 415 dollar limitation

135 prescribed by this section shall be reduced in accordance with
136 regulations issued by the Secretary of the Treasury pursuant
137 to the provisions of Section 415(b) of the Internal Revenue
138 Code, so that the limitation (as so reduced) equals an annual
139 straight life benefit (when the retirement income benefit
140 begins) which is equivalent to an annual benefit in the
141 amount of the applicable dollar limitation of Section
142 415(b)(1)(A) of the Internal Revenue Code (as adjusted
143 pursuant to Section 415(d) of the Internal Revenue Code)
144 beginning at age sixty-two.

145 (2) The limitation reduction provided in paragraph (1) of
146 this subdivision shall not apply if the member commencing
147 retirement benefits before age sixty-two is a qualified
148 participant. A qualified participant for this purpose is a
149 participant in a defined benefit plan maintained by a state, or
150 any political subdivision of a state, with respect to whom the
151 service taken into account in determining the amount of the
152 benefit under the defined benefit plan includes at least fifteen
153 years of service: (i) As a full-time employee of any police or
154 fire department organized and operated by the state or
155 political subdivision maintaining the defined benefit plan to
156 provide police protection, fire-fighting services or emergency
157 medical services for any area within the jurisdiction of such
158 state or political subdivision; or (ii) as a member of the armed
159 forces of the United States.

160 (3) The limitation reduction provided in paragraph (1) of
161 this subdivision shall not be applicable to preretirement
162 disability benefits or preretirement death benefits.

163 (4) For purposes of adjusting the 415 dollar limitation for
164 benefit commencement before age sixty-two or after age
165 sixty-five (if the plan provides for such adjustment), no
166 adjustment is made to reflect the probability of a member's
167 death: (i) After the annuity starting date and before age sixty-
168 two; or (ii) after age sixty-five and before the annuity starting
169 date.

170 (f) *Adjustment when member has less than ten years of*
171 *participation.* -- In the case of a member who has less than
172 ten years of participation in the retirement system (within the
173 meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the
174 415 dollar limitation (as adjusted pursuant to Section 415(d)
175 of the Internal Revenue Code and subdivision (e) of this
176 section) shall be reduced by multiplying the otherwise
177 applicable limitation by a fraction, the numerator of which is
178 the number of years of participation in the plan (or one, if
179 greater), and the denominator of which is ten. This
180 adjustment shall not be applicable to preretirement disability
181 benefits or preretirement death benefits.

182 (g) The application of the provisions of this section shall
183 not cause the maximum annual benefit provided to a member
184 to be less than the member's accrued benefit as of December
185 31, 2008 (the end of the limitation year that is immediately
186 prior to the effective date of the final regulations for this
187 retirement system as defined in Treasury Regulation
188 §1.415(a)-1(g)(2)), under provisions of the retirement system
189 that were both adopted and in effect before April 5, 2007,
190 provided that such provisions satisfied the applicable
191 requirements of statutory provisions, regulations, and other
192 published guidance relating to Section 415 of the Internal
193 Revenue Code in effect as of December 31, 2008, as
194 described in Treasury Regulation §1.415(a)-1(g)(4). If
195 additional benefits are accrued for a member under this
196 retirement system after January 1, 2009, then the sum of the
197 benefits described under the first sentence of this subdivision
198 and benefits accrued for a member after January 1, 2009,
199 must satisfy the requirements of Section 415, taking into
200 account all applicable requirements of the final 415 Treasury
201 Regulations.

§51-9-12b. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiaries' interest and take precedence

3 over any inconsistent provisions of this retirement system.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the retirement system
6 to the contrary, the payment of benefits under this article
7 shall be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the regulations
9 thereunder. For this purpose, the following provisions apply:

10 (a) The payment of benefits under the retirement system
11 to any member shall be distributed to him or her not later
12 than the required beginning date, or be distributed to him or
13 her commencing not later than the required beginning date,
14 in accordance with Treasury Regulations prescribed under
15 Section 401(a)(9) of the Internal Revenue Code, over the life
16 of the member or over the lives of the member and his or her
17 beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary. Benefit
19 payments under this section shall not be delayed pending, or
20 contingent upon, receipt of an application for retirement from
21 the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the retirement system has been distributed,
25 then the remaining portion of that interest shall be distributed
26 at least as rapidly as under the method of distribution being
27 used at the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the retirement
30 system shall be distributed by December 31 of the calendar
31 year containing the fifth anniversary of the member's death,
32 except as follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary or
35 over a period certain not greater than the life expectancy of
36 the beneficiary commencing on or before December 31 of the

37 calendar year immediately following the calendar year in
38 which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no later
41 than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or (ii)
46 December 31 of the calendar year following the calendar year
47 in which the spouse died.

§51-9-12c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 system, 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 that is equal to at least $500 paid directly
8 to an eligible retirement plan specified by the distributee in
9 a direct 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 such 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; (iv) any hardship distribution described
26 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code;
27 and (v) any other distribution or distributions expected to
28 total less than $200 during a year. For distributions after
29 December 31, 2001, a portion of a distribution shall not fail
30 to be an eligible rollover distribution merely because the
31 portion consists of after-tax employee contributions which
32 are not includable in gross income. However, this portion
33 may be paid only to an individual retirement account or
34 annuity described in Section 408(a) or (b) of the Internal
35 Revenue Code, or (for taxable years beginning before
36 January 1, 2007) to a qualified trust which is part of a defined
37 contribution plan described in Section 401(a) or (for taxable
38 years beginning after December 31, 2006) to a qualified trust
39 or to an annuity contract described in Section 403(a) or (b) of
40 the Internal Revenue Code that agrees to separately account
41 for amounts transferred (including interest or earnings
42 thereon), including separately accounting for the portion of
43 the distribution which is includable in gross income and the
44 portion of the distribution which is not so includable, or (for
45 taxable years beginning after December 31, 2007) to a Roth
46 IRA described in Section 408A of the Internal Revenue
47 Code.

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the Internal
50 Revenue Code, an individual retirement annuity described in
51 Section 408(b) of the Internal Revenue Code, an annuity plan
52 described in Section 403(a) of the Internal Revenue Code, or
53 a qualified plan described in Section 401(a) of the Internal
54 Revenue Code, that accepts the distributee's eligible rollover
55 distribution: *Provided,* That in the case of an eligible rollover
56 distribution prior to January 1, 2002, to the surviving spouse,
57 an eligible retirement plan is limited to an individual

58 retirement account or individual retirement annuity. For
59 distributions after December 31, 2001, an eligible retirement
60 plan also means an annuity contract described in Section
61 403(b) of the Internal Revenue Code and an eligible plan
62 under Section 457(b) of the Internal Revenue Code which is
63 maintained by a state, political subdivision of a state, or any
64 agency or instrumentality of a state or political subdivision of
65 a state and which agrees to separately account for amounts
66 transferred into the plan from this system. For distributions
67 after December 31, 2007, an eligible retirement plan also
68 means a Roth IRA described in Section 408A of the Internal
69 Revenue Code: *Provided, however,* That in the case of an
70 eligible rollover distribution after December 31, 2007, to a
71 designated beneficiary (other than a surviving spouse) as
72 such term is defined in Section 402(c)(11) of the Internal
73 Revenue Code, an eligible retirement plan is limited to an
74 individual retirement account or individual retirement annuity
75 which meets the conditions of Section 402(c)(11) of the
76 Internal Revenue Code.

77 (3) "Distributee" means a judge or former judge. In
78 addition, the judge's or former judge's surviving spouse and
79 the judge's or former judge's spouse or former spouse who
80 is the alternate payee under a qualified domestic relations
81 order, as defined in Section 414(p) of the Internal Revenue
82 Code, with respect to governmental plans, are distributees
83 with regard to the interest of the spouse or former spouse.
84 For distributions after December 31, 2007, "distributee" also
85 includes a designated beneficiary (other than a surviving
86 spouse) as such term is defined in Section 402(c)(11) of the
87 Internal Revenue Code.

88 (4) "Direct rollover" means a payment by the system to
89 the eligible retirement plan.

90 (b) Nothing in this section may be construed as
91 permitting rollovers into this system or any other system
92 administered by the board.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2010

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2485	40	4166	89	4374	26
2503	183	4167	5	4407	7
2663	139	4171	43	4416	29
2773	197	4172	135	4425	150
3152	11	4176	92	4436	58
3301	110	4182	95	4450	148
4018	37	4186	160	4457	18
4026	56	4187	91	4559	202
4031	64	4188	182	4486	195
4034	138	4194	165	4504	200
4035	186	4201	2	4512	67
4036	77	4211	65	4524	6
4037	17	4223	174	4525	131
4038	105	4247	75	4527	3
4039	205	4248	19	4531	102
4040	60	4260	104	4534	86
4081	119	4273	109	4541	49
4108	122	4277	85	4559	157
4110	123	4285	13	4577	79
4128	108	4291	15	4582	169
4130	72	4299	144	4589	74
4133	161	4309	206	4593	63
4134	32	4312	187	4604	47
4138	159	4335	188	4615	103
4140	158	4339	31	4623	112
4142	155	4352	45	4630	14
4143	80	4354	53	4647	76
4144	153	4359	111	4668	9
4145	70	4361	52	4669	61
4155	88	4373	27	4670	10
4164	20				

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2010

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
38	166	349	52	453	152
41	115	350	65	457	165
51	21	352	28	461	2
70	143	354	154	462	30
81	146	362	164	464	16
89	148	365	70	465	180
183	155	372	69	471	166
185	23	376	84	477	17
186	76	381	203	483	224
213	218	382	103	490	181
214	159	385	78	494	191
215	206	387	11	496	130
216	46	388	31	498	134
218	89	390	73	499	26
219	118	391	141	510	9
229	41	394	214	511	19
230	136	396	108	512	220
232	188	397	18	514	60
236	43	398	39	518	172
237	133	401	137	519	49
238	170	407	132	526	30
240	190	422	96	527	170
273	114	427	48	533	48
286	185	435	5	543	71
291	111	436	68	547	126
336	122	442	189	548	203
337	128	445	29	553	62
339	213	446	98	557	78
345	101	449	183	567	143

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2010
Page Two

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
573	12	611	68	636	25
574	97	612	96	648	33
577	171	614	168	649	175
583	196	618	154	656	167
584	151	624	421	664	90
595	114	627	128	665	106
596	178	631	57	669	24
597	94	633	51	696	127
604	130	635	177	698	133
610	22				

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2010

House Bills = 4 Digits Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	238	27	4373	53	4354
2	4201	28	471	54	490
3	4527	29	4416	55	396
4	236	30	526	56	4026
5	4167	31	4339	57	631
6	4524	32	4134	58	4436
7	4407	33	648	59	391
8	213	34	457	60	4040
9	4668	35	387	61	4669
10	4670	36	362	62	553
11	3152	37	4018	63	4593
12	573	38	514	64	4031
13	4285	39	365	65	4211
14	4630	40	2485	66	229
15	4291	41	436	67	4512
16	381	42	624	68	611
17	4037	43	4171	69	499
18	4457	44	385	70	4145
19	4248	45	4352	71	543
20	4164	46	215	72	4130
21	51	47	4604	73	339
22	610	48	533	74	4589
23	349	49	4541	75	4247
24	669	50	218	76	4647
25	636	51	633	77	4036
26	4374	52	4361	78	557

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2010
Page Two

House Bills = 4 Digits Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
79	4577	103	4615	127	696
80	4143	104	4260	128	627
81	518	105	4038	129	237
82	350	106	665	130	604
83	496	107	483	131	4525
84	382	108	4128	132	376
85	4277	109	4273	133	698
86	4534	110	3301	134	394
87	494	111	4359	135	4172
88	4155	112	4623	136	186
89	4166	113	388	137	183
90	664	114	595	138	4034
91	4187	115	41	139	2663
92	4176	116	240	140	519
93	422	117	273	141	336
94	597	118	286	142	510
95	4182	119	4081	143	567
96	612	120	407	144	4299
97	574	121	291	145	464
98	337	122	4108	146	89
99	498	123	4110	147	81
100	512	124	477	148	4450
101	511	125	70	149	372
102	4531	126	547	150	4425

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2010
Page Three

House Bills = 4 Digits — Senate Bills = 2,3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
151	584	170	527	189	185
152	230	171	577	190	345
153	4144	172	427	191	461
154	618	173	354	192	216
155	4142	174	4223	193	214
156	390	175	649	194	232
157	4559	176	398	195	4486
158	4140	177	635	196	583
159	4138	178	596	197	2773
160	4186	179	462	198	435
161	4133	180	453	199	352
162	446	181	219	200	4504
163	449	182	4188	201	465
164	442	183	2503	202	4459
165	4194	184	397	203	548
166	38	185	401	204	445
167	656	186	4035	205	4039
168	614	187	4312	206	4309
169	4582	188	4335		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2010

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1003	10	1015	2	1020	7
1004	14	1016	3	1021	8
1005	13	1017	4	1022	9
1010	12	1018	5	1023	10
1014	1	1019	6	1024	11

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2010

Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	1014	7	1020	12	1010
2	1015	8	1021	13	1005
3	1016	9	1022	14	1004
4	1017	10	1023	15	1003
5	1018	11	1024		
6	1019				

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2010

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
201	11	212	5	216	4
202	1	214	2		
211	9	215	3		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2010

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2003	10	2009	8	2010	6
2006	7				

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2010

House Bill = 3 Digits Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	202	5	212	9	211
2	214	6	2010	10	2003
3	215	7	2006	11	201
4	216	8	2009		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Fourth Extraordinary Session, 2009

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
406	5	409	2	411	4
408	1	410	3		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Fourth Extraordinary Session, 2009

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
4001	6	4003	10	4007	8
4002	9	4004	7		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Fourth Extraordinary Session, 2009

House Bills = 3 Digits Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	408	5	406	9	4002
2	409	6	4001	10	4003
3	410	7	4004		
4	411	8	4007		

INDEX

Regular Session, 2010

	Ch.	Page
ADMINISTRATION:		
Public Land Corporation		
Powers and duties	1	2
State lands		
Mineral rights	1	5
AGRICULTURE:		
Apiary owners and operators		
Liability of		
Limiting	3	13
Aquaculture Development Act		
Advisory board	4	18
Agriculture, Department of		
Lead agency	4	17
Powers and duties	4	17
Definitions	4	16
Legislative findings and purpose	4	16
Livestock Care Standards Board		
Creating	2	9
Definitions	2	9
Legislative findings	2	8
Meetings	2	13
Members		
Compensation of	2	12
Powers and Duties	2	11
ALCOHOLISM AND DRUG ABUSE:		
Health and Human Resources, Department of		
Safety and Treatment Fund	5	19
ALL-TERRAIN VEHICLES:		
Definitions		
Revising	6	27
Utility-terrain vehicle	6	35
ANIMAL VACCINATIONS:		
Dogs and cats		
Rabies vaccinations		
Requiring	7	46

APPROPRIATIONS:
Budget Bill 8 48
Index to, by accounts 8 54
Supplemental
Agriculture, Department of
Agriculture Fees Fund 10 254
Crime Victims Compensation Fund 9 251
Culture and History, Division of 9 251
Environmental Protection, Division of 9 252
Health, Division of –
Vital Statistics 10 255
Higher Education Policy Commission 10 258
Human Services, Division of 12 254
Two-Parent Program Fund 10 256
Racing Commission 10 256
Senior Services, Bureau of 10 257

ATHLETIC TRAINERS:
Board of Physical Therapy
Powers and duties 11 262
Rule-making authority 11 262
Definitions 11 260
Registration
Renewal 11 264
Requirements 11 263
Title protection 11 261

AUDITS:
Local government offices
Published electronically
Allowing 12 266

BANKS AND BANKING:
Banking, Division of
Commissioner of Banking
Criminal background investigations
State Police and FBI
Eliminating requirement 15 301
Employees of
Acceptance of credit
Regulating 16 310
Residential mortgage brokers, lenders and loan originators
Appraisal fees collected by
Refunding 14 294
Licensing 13 272
Safe Mortgage Licensing Act
Definitions 13 278
License and registration
Application and issuance 13 285
Requiring 13 283
Loan originators 13 287
Continuing education 13 289

BONDS:
Federal subsidy bonds
Authority to issue 17 324
Definitions 17 322

BOONE COUNTY:
Board of Education
Levying body
Extending time 203 2209

CEMETERIES:
Private lands
Access to 18 336
Definitions 18 337
Protection of 18 326

CHARITABLE FUNDS:
Charitable organizations
Registration 19 344
Exemptions 19 348
Solicitation of
Definitions 19 341

CHILD WELFARE:
Caregivers Consent Act
Affidavit 26 380
Good faith reliance 26 382
Applicability
Exceptions 26 383
Definitions 26 379
False statement
Penalty 26 383
Health care facility or practitioner
Duties 26 380
Minor's health care
Caregiver consent 26 380
Revocation and termination 26 382
Rule-making authority 26 383
Short title 26 379
Child care services
Evacuation plans
Requiring written 23 363
Out-of-school time programs
Requirements 22 358
Commission to Study Residential Placement of Children
Reconstituting 25 373
Foster care
Placement of children
Pilot program 20 351
Requirements 20 351

CHILD WELFARE - (Continued):
National Guard members
Parenting plan
Permanent
Requiring 21 355
Teen courts
Municipalities to operate
Allowing 24 368

CHILDREN'S HEALTH INSURANCE:
Children's Health Insurance Program
Eligibility 27 384

CIRCUIT COURTS:
Copying charge
Increasing fee 28 386

CLAIMS:
Claims against the State 29, 30 390, 392
United States Treasury Offset Program
Debt collection
Authorizing 31 404

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
1	1	5*	HB4450	1552
2	2	1 a	SB574	1072
3	1 A	1	HB4130	865
3	1 A	4	HB4130	866
3	1 A	5	HB4130	866
3	2	4 a	SB339	897
3	3	2	HB4589	902
3	3	2 b	HB4589	903
3	3	5	HB4589	904
3	3	11	HB4589	910
3	4	10	HB4589	911
3	4 A	17	HB4247	918
3	5	13	HB4589	913
3	8	1	HB4647	921
3	8	1 a	HB4647	924
3	8	2	HB4647	932
3	8	8	HB4647	938
3	8	12	HB4647	942
3	10	3 a*	HB4036	947
3	10	5	SB557	951
3	12*	1	HB4130	869
		2	HB4130	869
		3	HB4130	870

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

		4	HB4130	874
		5	HB4130	874
		6	HB4130	875
		7	HB4130	876
		8	HB4130	876
		9	HB4130	878
		10	HB4130	880
		11	HB4130	883
		12	HB4130	886
		13	HB4130	888
		14	HB4130	891
		15	HB4130	894
		16	HB4130	895
		17	HB4130	896
4	1	23	SB477	1276
5	6	4 a	HB4026	579
5	16	13	SB446	1738
5	16	17	SB449	1745
5	16	22	HB4299	1537
5	16 B	6 d	HB4373	384
5	16 D	1	SB442	1746
5 A	1	2	SB219	1860
5 A	3	1	HB4582	1774
5 A	3	2	HB4582	1775
5 A	3	3	HB4582	1775
5 A	3	4	HB4582	1777
5 A	3	12	HB4582	1779
5 A	3	18	HB4582	1781
5 A	3	36	HB4582	1781
5 A	3	37	HB4582	1782
5 A	3	48	SB219	1862
5 A	3	49	SB219	1862
5 A	3	59*	HB4582	1786
5 A	6	4	SB583	2046
5 A	10	2	SB596	1850
5 A	10	9	SB596	1852
5 A	11	3	SB238	2
5 A	11	6	SB238	5
5 B	2 F	2	SB518	977
5 F	2	1	HB4194	1750
6	9	7	SB573	266
7	2	8*	HB4450	1558
7	6	2	SB385	480
7	6	2 a*	SB633	513
8	12	16 c*	HB4034	1519
8	13	22 a	SB633	514
8	14	5 a	HB2663	1521

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

8	14	6	SB89	1542
8	14	17	SB89	1543
8	15	8 b	HB4155	1007
8	15	17	HB4166	1010
8	19	12 a	SB465	2183
8	20	10	SB465	2186
8	22 A	28	SB519	1523
8 A	2	3	SB388	1175
8 A	4	2	SB595	1181
8 A	5	12	SB41	1186
			SB595	1184
8 A	8	3	SB388	1178
9	6	1	SB498	1120
11	1	2 b*	SB397	1878
11	3	1	SB401	1882
11	3	2 a	SB401	1885
11	3	10	SB401	1886
11	3	12	SB401	1889
11	3	15	SB401	1890
11	3	15 a*	SB401	1892
11	3	15 b*	SB401	1892
11	3	15 c*	SB401	1894
11	3	15 d*	SB401	1895
11	3	15 e*	SB401	1896
11	3	15 f*	SB401	1897
11	3	15 g*	SB401	1897
11	3	15 h*	SB401	1897
11	3	15 i*	SB401	1897
11	3	19	SB401	1898
11	3	23 a*	SB401	1899
11	3	24	SB401	1903
11	3	24 a	SB401	1906
11	3	24 b*	SB401	1907
11	3	25	SB401	1909
11	3	25 a*	SB401	1913
11	3	32*	SB401	1914
11	3	33*	SB401	1914
11	6 K*	1	SB401	1915
		2	SB401	1915
		3	SB401	1918
		4	SB401	1919
		5	SB401	1920
		6	SB401	1922
		7	SB401	1923
		8	SB401	1923
11	8	6 e	SB70	1278
11	8	12	SB547	1283

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

11	8	12 a	SB547	1284
11	10	5 t	HB4035	1928
11	10	5 z	HB4035	1930
11	10	18	HB4312	1939
11	12	5	HB4335	1944
11	13 B	19*	SB345	1970
11	13 V	7	HB4035	1930
11	13AA*	1	SB185	1953
		2	SB185	1953
		3	SB185	1953
		4	SB185	1958
		5	SB185	1962
		6	SB185	1964
		7	SB185	1965
		8	SB185	1966
		9	SB185	1967
		10	SB185	1967
		11	SB185	1968
		12	SB185	1968
		13	SB185	1968
11	15 B	2	SB461	1975
11	15 B	2 a	SB461	2001
11	15 B	11	SB461	2001
11	15 B	17	SB461	2003
11	15 B	25	SB461	2007
11	15 B	26	SB461	2008
11	15 B	32	SB461	2008
11	21	9	SB216	2010
11	21	54	HB4035	1932
11	21	74	HB4035	1934
11	24	3	SB214	2012
11 A	3	5 a*	SB232	2016
11 A	3	5 b*	SB232	2016
11 A	3	6	SB232	2017
11 A	3	8	SB232	2018
11 A	3	9	SB232	2018
11 A	3	11	SB232	2019
11 A	3	14	SB232	2020
11 A	3	15	SB232	2021
11 A	3	16	SB232	2022
11 A	3	18	SB232	2022
11 A	3	19	SB232	2023
11 A	3	20	SB232	2024
11 A	3	21	SB232	2025
11 A	3	22	SB232	2027
11 A	3	23	SB232	2028
11 A	3	24	SB232	2030

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

11 A	3	25	SB232	2031
11 A	3	26	SB232	2034
11 A	3	27	SB232	2035
11 A	3	28	SB232	2037
11 A	3	29	SB232	2039
11 A	3	30	SB232	2039
11 A	3	31	SB232	2040
11 A	3	32	SB232	2040
11 A	3	52	HB4486	2043
11 A	3	55	HB4486	2044
12	1	4	SB633	518
12	3	10e	SB583	2052
13	1	2	SB352	2060
13	2 H*	1	SB237	1305
		2	SB237	1305
		3	SB237	1306
		4	SB237	1306
		5	SB237	1309
		6	SB237	1310
		7	SB237	1312
		8	SB237	1314
		9	SB237	1314
		10	SB237	1315
		11	SB237	1316
		12	SB237	1316
13	4*	1	HB4037	322
		2	HB4037	324
14	1	37*	HB4339	404
15	1 E	1	HB4504	2092
15	1 E	2	HB4504	2097
15	1 E	3	HB4504	2098
15	1 E	4	HB4504	2098
15	1 E	5	HB4504	2098
15	1 E	6	HB4504	2099
15	1 E	7	HB4504	2099
15	1 E	8	HB4504	2100
15	1 E	9	HB4504	2100
15	1 E	10	HB4504	2101
15	1 E	11	HB4504	2101
15	1 E	12	HB4504	2102
15	1 E	13	HB4504	2102
15	1 E	14	HB4504	2102
15	1 E	15	HB4504	2103
15	1 E	16	HB4504	2107
15	1 E	17	HB4504	2107
15	1 E	18	HB4504	2108
15	1 E	19	HB4504	2108

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

15	1 E	20	HB4504	2108
15	1 E	21	HB4504	2109
15	1 E	22	HB4504	2109
15	1 E	23	HB4504	2109
15	1 E	24	HB4504	2110
15	1 E	25	HB4504	2111
15	1 E	26	HB4504	2112
15	1 E	27	HB4504	2113
15	1 E	28	HB4504	2114
15	1 E	29	HB4504	2115
15	1 E	30	HB4504	2116
15	1 E	31	HB4504	2116
15	1 E	32	HB4504	2117
15	1 E	33	HB4504	2119
15	1 E	34	HB4504	2119
15	1 E	35	HB4504	2120
15	1 E	36	HB4504	2120
15	1 E	37	HB4504	2121
15	1 E	38	HB4504	2122
15	1 E	39	HB4504	2123
15	1 E	40	HB4504	2124
15	1 E	41	HB4504	2124
15	1 E	42	HB4504	2126
15	1 E	43	HB4504	2126
15	1 E	44	HB4504	2128
15	1 E	45	HB4504	2128
15	1 E	46	HB4504	2129
15	1 E	47	HB4504	2129
15	1 E	48	HB4504	2130
15	1 E	49	HB4504	2130
15	1 E	50	HB4504	2131
15	1 E	50 a*	HB4504	2132
15	1 E	51	HB4504	2133
15	1 E	52	HB4504	2135
15	1 E	53	HB4504	2135
15	1 E	54	HB4504	2135
15	1 E	55	HB4504	2136
15	1 E	56	HB4504	2137
15	1 E	57	HB4504	2137
15	1 E	57 a*	HB4504	2138
15	1 E	58	HB4504	2139
15	1 E	58 a*	HB4504	2139
15	1 E	58 b*	HB4504	2140
15	1 E	59	HB4504	2141
15	1 E	60	HB4504	2141
15	1 E	61	HB4504	2144
15	1 E	62	HB4504	2145

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

15	1 E	63	HB4504	2146
15	1 E	64	HB4504	2147
15	1 E	65	HB4504	2149
15	1 E	66	HB4504	2150
15	1 E	67	HB4504	2150
15	1 E	67 a*	HB4504	2150
15	1 E	68	HB4504	2150
15	1 E	69	HB4504	2150
15	1 E	70	HB4504	2150
15	1 E	71	HB4504	2151
15	1 E	72	HB4504	2151
15	1 E	73	HB4504	2152
15	1 E	74	HB4504	2152
15	1 E	75	HB4504	2153
15	1 E	76	HB4504	2153
15	1 E	76 a*	HB4504	2154
15	1 E	76 b*	HB4504	2154
15	1 E	77	HB4504	2158
15	1 E	78	HB4504	2158
15	1 E	79	HB4504	2158
15	1 E	80	HB4504	2158
15	1 E	81	HB4504	2159
15	1 E	82	HB4504	2159
15	1 E	83	HB4504	2160
15	1 E	84	HB4504	2160
15	1 E	85	HB4504	2160
15	1 E	86	HB4504	2161
15	1 E	87	HB4504	2162
15	1 E	88	HB4504	2162
15	1 E	89	HB4504	2162
15	1 E	90	HB4504	2162
15	1 E	91	HB4504	2163
15	1 E	92	HB4504	2163
15	1 E	93	HB4504	2163
15	1 E	94	HB4504	2164
15	1 E	95	HB4504	2164
15	1 E	96	HB4504	2165
15	1 E	97	HB4504	2165
15	1 E	98	HB4504	2165
15	1 E	99	HB4504	2165
15	1 E	100	HB4504	2166
15	1 E	101	HB4504	2167
15	1 E	102	HB4504	2167
15	1 E	103	HB4504	2167
15	1 E	104	HB4504	2168
15	1 E	105	HB4504	2168
15	1 E	106	HB4504	2168

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

15	1 E	107	HB4504	2168
15	1 E	108	HB4504	2169
15	1 E	109	HB4504	2169
15	1 E	110	HB4504	2169
15	1 E	111	HB4504	2170
15	1 E	112	HB4504	2170
15	1 E	112 a*	HB4504	2170
15	1 E	113	HB4504	2171
15	1 E	114	HB4504	2171
15	1 E	115	HB4504	2171
15	1 E	116	HB4504	2171
15	1 E	117	HB4504	2172
15	1 E	118	HB4504	2172
15	1 E	119	HB4504	2172
15	1 E	120	HB4504	2172
15	1 E	121	HB4504	2172
15	1 E	122	HB4504	2172
15	1 E	123	HB4504	2172
15	1 E	124	HB4504	2172
15	1 E	125	HB4504	2172
15	1 E	126	HB4504	2172
15	1 E	127	HB4504	2172
15	1 E	128	HB4504	2172
15	1 E	129	HB4504	2172
15	1 E	130	HB4504	2172
15	1 E	131	HB4504	2173
15	1 E	132	HB4504	2173
15	1 E	133	HB4504	2174
15	1 E	134	HB4504	2174
15	1 E	135	HB4504	2174
15	1 E	136	HB4504	2176
15	1 E	137	HB4504	2177
15	1 E	138	HB4504	2177
15	1 E	139*	HB4504	2178
15	1 E	140*	HB4504	2179
15	1 E	141*	HB4504	2179
15	1 E	142*	HB4504	2179
15	1 E	143*	HB4504	2181
15	1 E	144*	HB4504	2181
15	1 E	145*	HB4504	2181
15	1 E	146*	HB4504	2181
15	1 E	147*	HB4504	2182
15	1 E	148*	HB4504	2182
15	1 F	11*	SB38	1763
15	2	7	SB462	1854
15	9 A	1*	HB4194	1760
15	9 A	2*	HB4194	1760

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

15	9 A	3*	HB4194	1761
16	1 A	1	HB4176	1020
16	1 A	2	HB4176	1021
16	1 A	3	HB4176	1021
16	1 A	4	HB4176	1023
16	1 A	5	HB4176	1025
16	1 A	6*	HB4176	1025
16	1 A	7*	HB4176	1026
16	1 A	8*	HB4176	1027
16	1 A	9*	HB4176	1029
16	1 A	10*	HB4176	1030
16	2 I	2	SB597	1033
16	2 I	8	SB597	1036
16	2 I	9	SB597	1036
16	4 C	3	HB4143	962
16	4 C	6	HB4143	964
16	4 C	6 a	HB4143	968
16	4 C	8	HB4143	969
16	4 C	9	HB4143	971
16	4 C	10	HB4143	974
16	4 C	12	HB4143	975
16	4 C	16	HB4143	976
16	4 D	4	SB422	1031
16	5 V	2	HB4182	1038
16	5 V	6	HB4182	1048
16	5 V	7	HB4182	1051
16	5 V	8	HB4182	1052
16	5 V	18	HB4182	1054
16	5 V	19	HB4182	1056
16	5 V	20	HB4182	1056
16	5 V	21	HB4182	1058
16	5 W*	1	SB81	1546
		2	SB81	1546
		3	SB81	1547
		4	SB81	1548
		5	SB81	1549
		6	SB81	1549
		7	SB81	1550
		8	SB81	1550
16	9 A	2	HB2773	2054
16	9 A	3	HB2773	2055
16	13	16	SB465	2191
16	13 A	9	SB465	2195
16	13 E	2	SB41	1188
16	13 E	4	SB41	1192
16	13 E	10 a*	SB41	1195
16	38	3	HB2503	1873

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

17	4	47	SB352	2061
17	4	49	SB352	2063
17	16 A	3	SB427	1804
17	16 A	5	SB427	1808
17	16 A	6	SB427	1812
17	16 A	10	SB427	1816
17	16 A	11	SB427	1819
17	16 A	13 a	SB427	1822
17	16 A	19	SB427	1824
17	16 A	26	SB427	1825
17	16 A	29	SB427	1825
17	16 A	30*	SB427	1826
17	28*	1	SB352	2066
		2	SB352	2066
		3	SB352	2067
		4	SB352	2070
		5	SB352	2075
		6	SB352	2077
		7	SB352	2080
		8	SB352	2082
		9	SB352	2083
		10	SB352	2084
		11	SB352	2085
		12	SB352	2086
17 A	1	1	HB4524	27
17 A	3	2	SB698	1389
17 A	3	3	SB394	1396
17 A	3	14	HB4172	1411
17 A	6	1	HB4524	35
17 B	2	1 a	SB396	538
17 B	2	4	SB396	539
17 B	2	5 a	SB396	540
17 C	4	1	HB4534	1001
			SB354	1828
17 C	4	2	SB354	1829
17 C	4	3	SB354	1829
17 C	4	5	SB354	1830
17 C	4	6	SB354	1830
17 C	4	7	SB354	1830
17 C	4	8	SB354	1831
17 C	4	9	SB354	1831
17 C	4	10	SB354	1832
17 C	4	11	SB354	1832
17 C	4	14	SB354	1833
17 C	4	15	SB354	1833
17 C	4	16	SB354	1833
17 C	5	2	SB186	1453

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

17 C	5	2 b*	SB186	1462
17 C	5	7	SB186	1466
17 C	5 A	1 a	SB186	1470
17 C	5 A	2	SB186	1472
17 C	5 A	3	HB4167	20
			SB186	1484
17 C	5 A	3 a	SB186	1491
17 C	5 C*	1	SB186	1500
		2	SB186	1501
		3	SB186	1503
		4	SB186	1503
		5	SB186	1504
17 C	6	7	SB435	2057
17 C	12	7	HB4223	1834
17 C	13 A*	1	SB183	1511
		2	SB183	1513
		3	SB183	1513
		4	SB183	1516
		5	SB183	1517
		6	SB183	1517
		7	SB183	1517
		8	SB183	1517
		9	SB183	1518
17 D	2 A	1	SB394	1399
17 D	2 A	2	SB394	1399
17 D	2 A	3	SB394	1399
17 D	2 A	6	SB394	1401
17 D	2 A	6 a*	SB394	1402
17 D	2 A	7	SB394	1406
17 D	2 A	8	SB394	1409
17 E	1	3	SB396	541
17 E	1	4	SB396	550
17 E	1	6	SB396	550
17 E	1	7	SB396	551
17 E	1	12	SB396	552
17 E	1	13	SB396	557
17 E	1	25	SB396	576
17 F	1	9	HB4524	46
18	2 A	1	SB631	667
18	2 A	2	SB631	669
18	2 A	3	SB631	671
18	2 A	4	SB631	672
18	2 A	5	SB631	674
18	2 A	6	SB631	675
18	2 A	7	SB631	675
18	2 A	8	SB631	676
18	2 A	9	SB631	677

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

18	2 E	5	HB4436	678
18	5	1 a	SB391	713
18	5	45	HB4040	719
18	5 A	6	HB4436	710
18	5 B	10*	HB4669	728
18	7 D	6	SB553	731
18	8	1	HB4593	736
18	8	1 a	HB4593	742
18	8	4	HB4593	744
18	8	6*	HB4593	748
18	9	6	SB633	520
18	9 A	8 a	HB4031	761
18	9 A	12	SB401	1923
18	9 A	21	HB4593	757
18	9 A	22*	HB4211	762
18	9 D	4 b	SB229	764
18	9 D	6	SB229.	764
18	9 D	8	SB229	773
18 A	4	8	HB4512	777
18 A	4	8 b	HB4512	795
18 A	4	8 e	HB4512	802
18 B	1 B	4	HB4026	580
			SB611	807
18 B	2 A	4	HB4026	592
18 B	2 B	6	HB4026	599
			SB611	821
18 B	3 C	7 a*	SB499	842
18 B	3 C	8	SB499	842
18 B	4	1	SB611	839
18 B	4	6	HB4026	616
18 B	4	9*	HB4145	858
18 B	5	4	HB4026	620
18 B	10	8	HB4026	630
18 B	17	2	SB543	861
18 B	19*	1	HB4026	637
		2	HB4026	640
		3	HB4026	643
		4	HB4026	644
		5	HB4026	647
		6	HB4026	649
		7	HB4026	651
		8	HB4026	655
		9	HB4026	655
		10	HB4026	657
		11	HB4026	658
		12	HB4026	660
		13	HB4026	662

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

		14	HB4026	663
		15	HB4026	664
		16	HB4026	665
		17	HB4026	665
		18	HB4026	666
19	1 C*	1	HB4201	8
		2	HB4201	9
		3	HB4201	9
		4	HB4201	11
		5	HB4201	12
		6	HB4201	13
19	13	4	HB4527	14
19	20 A	2	HB4407	47
19	20 A	5	HB4407	48
19	23	10	SB337	1075
19	23	13	SB337	1084
19	23	13 b	SB337	1089
19	32*	1	SB236	16
		2	SB236	16
		3	SB236	16
		4	SB236	17
		5	SB236	18
20	2	5 a	SB336	1524
20	2	7	SB336	1527
20	2	19	SB512	1123
20	2	21	SB511	1124
20	2	42	SB510	1529
20	16*	1	SB567	1530
		2	SB567	1530
		3	SB567	1531
		4	SB567	1533
		5	SB567	1534
		6	SB567	1535
		7	SB567	1536
		8	SB567	1536
21	1 B	5	HB3301	1168
21	1 B	7	HB3301	1169
21	1 B	8*	HB3301	1170
21	1 C	2	HB4359	1171
21	3 C	1	HB4577	953
21	3 C	2 a	HB4577	955
21	3 C	10 a	HB4577	956
21	3 C	11	HB4577	958
21	5 E	5	HB4623	1173
22	1	9	SB496	989
22	6	22	SB382	992
22	11	3	HB4277	995

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

22	11	8	HB4277	999
22	15 A	2	SB398	1841
22	15 A	3	SB627	1294
22	15 A	4	SB627	1298
22	15 A	22	SB398	1845
22	18	22	HB4187	1016
22 A	1	21	HB4525	1337
22 A	2 A	301	HB4525	1341
22 A	2 A	304	HB4525	1342
22 A	2 A	310	HB4525	1343
22 A	6	3	HB4525	1346
22 A	6	4	HB4525	1349
22 A	6	6	HB4525	1354
22 A	6	7	HB4525	1356
22 A	7	4	HB4525	1360
22 A	7	6	HB4525	1363
22 A	11	2	HB4525	1364
22 A	11	3	HB4525	1366
23	4	10	HB4459	2204
23	4	15	HB4459	2207
24	2	1 j*	SB656	1765
24	2	11 a	SB614	1770
24	2 F	3	SB350	983
24	3	10	SB465	2202
25	1	15	HB4171	479
25	1	16	HB4531	1126
27	5	11	SB604	1328
29	1	8 a	HB4457	326
29	3	5	SB635	1848
29	6	5	SB464	1540
29	12 A	16	HB4615	1130
29	18	6	SB527	1790
29	18	25*	SB527	1796
29	19	2	HB4248	341
29	19	5	HB4248	344
29	19	6	HB4248	348
29	22	18	SB612	1060
29	22	18 a	SB337	1096
29	22	18 c*	SB612	1068
29	22 C	27	SB237	1317
			SB337	1109
29 A	2	7	SB453	1856
30	3	2	SB372	1590
30	3	4	SB372	1591
30	3	5	SB372	1592
30	3	6	SB372	1594
30	3	8	SB372	1595

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

30	7	20*	HB4425	1596
30	7 B	4	SB584	1597
30	8	1	SB230	1601
30	8	2	SB230	1602
30	8	3	SB230	1602
30	8	4	SB230	1604
30	8	5	SB230	1606
30	8	6	SB230	1608
30	8	7	SB230	1610
30	8	8	SB230	1610
30	8	9	SB230	1611
30	8	10	SB230	1613
30	8	11	SB230	1614
30	8	12*	SB230	1614
30	8	13*	SB230	1615
30	8	14*	SB230	1616
30	8	15*	SB230	1616
30	8	16*	SB230	1618
30	8	17*	SB230	1620
30	8	18*	SB230	1620
30	8	19*	SB230	1623
30	8	20*	SB230	1624
30	8	21*	SB230	1624
30	8	22*	SB230	1625
30	10	1	HB4144	1627
30	10	2	HB4144	1627
30	10	3	HB4144	1627
30	10	4	HB4144	1631
30	10	5	HB4144	1633
30	10	6	HB4144	1635
30	10	7	HB4144	1636
30	10	8	HB4144	1637
30	10	9	HB4144	1638
30	10	10	HB4144	1639
30	10	11	HB4144	1640
30	10	12	HB4144	1642
30	10	13	HB4144	1643
30	10	14	HB4144	1644
30	10	15	HB4144	1645
30	10	16	HB4144	1646
30	10	17	HB4144	1646
30	10	18	HB4144	1648
30	10	19	HB4144	1648
30	10	20	HB4144	1650
30	10	21*	HB4144	1651
30	10	22*	HB4144	1651
30	10	23*	HB4144	1652

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

30	13 A	1	HB4450	1558
30	13 A	2	HB4450	1559
30	13 A	3	HB4450	1559
30	13 A	4	HB4450	1566
30	13 A	5	HB4450	1567
30	13 A	6	HB4450	1570
30	13 A	7	HB4450	1571
30	13 A	8	HB4450	1571
30	13 A	9	HB4450	1573
30	13 A	10	HB4450	1574
30	13 A	11	HB4450	1578
30	13 A	12	HB4450	1578
30	13 A	13	HB4450	1579
30	13 A	14	HB4450	1580
30	13 A	15	HB4450	1580
30	13 A	16	HB4450	1581
30	13 A	17	HB4450	1581
30	13 A	18	HB4450	1582
30	13 A	19	HB4450	1582
30	13 A	20	HB4450	1582
30	13 A	21	HB4450	1583
30	13 A	22	HB4450	1584
30	13 A	23	HB4450	1586
30	13 A	24	HB4450	1587
30	13 A	25	HB4450	1587
30	14 A	1	SB618	1653
30	14 A	2	SB618	1660
30	14 A	3	SB618	1661
30	14 A	4	SB618	1661
30	14 A	5	SB618	1661
30	17	1	HB4142	1666
30	17	2	HB4142	1666
30	17	3	HB4142	1667
30	17	4	HB4142	1668
30	17	5	HB4142	1671
30	17	6	HB4142	1673
30	17	7	HB4142	1673
30	17	8	HB4142	1675
30	17	9	HB4142	1675
30	17	10	HB4142	1676
30	17	11	HB4142	1677
30	17	12	HB4142	1677
30	17	13	HB4142	1678
30	17	14	HB4142	1679
30	17	15	HB4142	1679
30	17	16	HB4142	1681
30	17	17*	HB4142	1682

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

30	17	18*	HB4142	1682
30	17	19*	HB4142	1683
30	18	11	SB390	1684
30	19	8	HB4559	1685
30	20	1	HB4140	1687
30	20	2	HB4140	1688
30	20	3	HB4140	1688
30	20	4	HB4140	1690
30	20	5	HB4140	1692
30	20	6	HB4140	1695
30	20	7	HB4140	1697
30	20	8	HB4140	1697
30	20	9	HB4140	1698
30	20	10	HB4140	1699
30	20	11	HB4140	1701
30	20	12	HB4140	1702
30	20	13	HB4140	1703
30	20	14	HB4140	1706
30	20	15	HB4140	1706
30	20	16*	HB4140	1707
30	20	17*	HB4140	1707
30	20	18*	HB4140	1709
30	20	19*	HB4140	1709
30	20	20*	HB4140	1712
30	20	21*	HB4140	1712
30	20	22*	HB4140	1712
30	20 A*	1	HB3152	261
		2	HB3152	261
		3	HB3152	262
		4	HB3152	262
		5	HB3152	263
		6	HB3152	264
		7	HB3152	265
30	23	6	HB4138	1714
30	25	1	HB4186	1718
30	25	2	HB4186	1718
30	25	3	HB4186	1718
30	25	4	HB4186	1719
30	25	5	HB4186	1722
30	25	6	HB4186	1724
30	25	7	HB4186	1725
30	25	8	HB4186	1726
30	25	9	HB4186	1727
30	25	10	HB4186	1728
30	25	11	HB4186	1729
30	25	12*	HB4186	1729
30	25	13*	HB4186	1730

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

30	25	14*	HB4186	1730
30	25	15*	HB4186	1732
30	25	16*	HB4186	1733
30	25	17*	HB4186	1733
30	25	18*	HB4186	1733
30	29	3	HB4188	1864
30	29	10	HB4188	1866
30	31	9	HB4133	1734
31	14	2	SB436	460
31	15	16 a	SB612	1068
31	17	4	HB4285	273
31	17	8	HB4630	295
31	17 A	2	HB4285	278
31	17 A	3	HB4285	283
31	17 A	4	HB4285	285
31	17 A	6	HB4285	287
31	17 A	9	HB4285	289
31	17 A	12	HB4285	290
31	17 A	13	HB4285	292
31	18	6	SB376	1370
31	20	9	HB4541	494
31	20	10	HB4541	497
31	20	30 a*	HB4531	1127
31	20	32	HB4541	501
31 A	2	4	HB4291	302
31 A	2	4 c	SB376	1382
31 A	4	26	SB381	311
31 B	2	203	SB624	463
31 B	2	211	SB624	465
31 B	10	1002	SB624	466
31 D	2	202	SB624	468
31 D	15	1503	SB624	470
31 E	2	202	SB624	471
31 E	14	1403	SB624	473
33	6	31 g*	SB394	1409
33	12 B	1	HB4260	1133
33	12 B	3	HB4260	1134
33	12 B	5	HB4260	1134
33	12 B	9	HB4260	1135
33	12 B	10	HB4260	1136
33	12 B	10 a*	HB4260	1137
33	12 B	11	HB4260	1137
33	12 C	6 a*	HB4038	1139
33	15 B	1	SB665	1145
33	15 B	2	SB665	1145
33	15 B	3	SB665	1146
33	15 B	5	SB665	1147

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

33	17	9 b	HB4038	1139
33	25 A	2	SB483	1148
33	25 A	5	SB483	1155
33	34	3	HB4128	1157
33	34	3 a*	HB4128	1159
33	34	4	HB4128	1164
33	46 A	4 a*	HB4273	1166
37	13 A	1	HB4457	336
37	13 A	2	HB4457	337
37	13 A	5	HB4457	338
37	13 A	7*	HB4457	338
38	1	8 a	SB376	1382
38	10 E*	1	HB4038	1141
		2	HB4038	1143
39	1	2 a	HB4450	1588
44	3	1	SB494	1004
44	3 A	35	SB494	1005
44	13	4 a	SB376	1385
44 A	3	1	SB664	1013
44 A	3	2	SB664	1015
46 A	4	102	SB387	440
47	9 A	2	SB624	474
47	9 A	3	SB624	476
47	21	2	SB577	1797
47	21	20	SB577	1801
47 B	10	1	SB696	1286
47 B	10	4	SB696	1291
48	9	205	SB51	355
48	27	202	SB490	530
48	27	206	HB4361	526
48	27	503	SB490	531
48	27	505	SB490	533
48	27	901	SB490	535
48	27	903	SB490	536
48	27	1002	HB4354	527
49	2 B	3	SB349	359
			SB610	364
49	2 B	8	SB349	367
49	5	11	SB669	369
49	5	13 d	SB669	370
49	5 E	6	HB4531	1128
49	7	34	SB636	373
49	7	35*	HB4164	351
49	11*	1	HB4374	379
		2	HB4374	379
		3	HB4374	380
		4	HB4374	380

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

		5	HB4374	380
		6	HB4374	382
		7	HB4374	382
		8	HB4374	383
		9	HB4374	383
		10	HB4374	383
51	2	15*	HB4352	483
51	10 A	6*	SB494	1006
59	1	10	SB376	1385
59	1	11	SB471	386
60 A	4	410	SB362	444
60 A	4	413*	HB4018	446
60 A	9	4	SB514	447
60 A	9	5	SB365	450
60 A	10	3	HB2485	452
60 A	10	4	HB2485	455
60 A	10	5	HB2485	457
60 A	10	8	HB2485	458
61	1	7	SB457	439
61	2	10 b	SB215	485
61	5	17	HB4604	488
61	8	14	HB4457	339
61	8 D	5	SB533	492
61	11	22	SB186	1505
61	11	25	SB186	1508
61	13*	1	HB4188	1868
		2	HB4188	1869
		3	HB4188	1870
		4	HB4188	1871
		5	HB4188	1872
		6	HB4188	1872
62	1 A	10*	SB649	1838
62	1 A	11*	SB649	1839
62	12	13	SB218	503
62	15	4	HB4593	758
64	2	1	SB240.	1198
64	2	2	SB240.	1198
64	2	3	SB240.	1199
64	3	1	SB273.	1203
64	5	1	SB286.	1212
64	5	2	SB286.	1213
64	6	1	HB4081	1216
64	6	2	HB4081	1217
64	6	3	HB4081	1217
64	6	4	HB4081	1218
64	7	1	SB407	1221
64	7	2	SB407	1225

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

64	7	3	SB407	1225
64	7	4	SB407	1229
64	7	5	SB407	1230
64	7	6	SB407	1230
64	8	1	SB291	1233
64	8	2	SB291	1235
64	9	1	HB4108	1238
64	9	2	HB4108	1238
64	9	3	HB4108	1241
64	9	4	HB4108	1241
64	9	5	HB4108	1241
64	9	6	HB4108	1243
64	9	7	HB4108	1262
64	9	8	HB4108	1263
64	9	9	HB4108	1263
64	9	10	HB4108	1264
64	9	11	HB4108	1265
64	9	12	HB4108	1269
64	9	13	HB4108	1270
64	10	1	HB4110	1271
64	10	2	HB4110	1272
64	10	3	HB4110	1272
64	10	4	HB4110	1274
64	10	5*	HB4110	1274

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
3	9	14	HB4647	920
4	8	6	HB4134	408
5	1 D	11	HB4134	408
5	10 D	8	HB4134	408
5	11	21	HB4134	408
5	14	12	HB4134	408
5	16	4 a	HB4134	408
5	16	27	HB4134	408
5	16 B	4 a	HB4134	408
5	16 C	10	HB4134	408
5	22 A	15	HB4134	408
5	26 A	6	HB4134	408
5	28	4	HB4134	408
5 A	3	14	HB4582	1773
5 A	3	21	HB4582	1773
5 A	3	22	HB4582	1773
5 A	3	23	HB4582	1773
5 A	3	24	HB4582	1773
5 A	3	25	HB4582	1773
5 A	3	26	HB4582	1773
5 A	3	37 a	HB4582	1773
5 A	3	38	HB4582	1773

* Indicates new chapter, article or section.

CODE REPEALED - (Continued):

5 A	3	39	HB4582	1773
5 A	3	40	HB4582	1773
5 A	3	41	HB4582	1773
5 A	3	42	HB4582	1773
5 A	3	54	HB4582	1773
5 A	3	55	HB4582	1773
5 A	3	55 a	HB4582	1773
5 A	3	57	HB4134	408
5A	8	15 a	HB4134	408
5 A	11	8	HB4134	408
5 B	2	13	HB4134	408
5 B	2 A	13	HB4134	408
5 B	2 C	8	HB4134	408
5 C	2	6	HB4134	408
5 D	1	24	HB4134	408
6 B	2	11	HB4134	408
6 C	3	5	HB4134	408
9 A	1	2 a	HB4134	409
10	5	6	HB4134	409
11	1	8	HB4134	409
12	6	20	HB4134	409
12	6 C	20	HB4134	409
15	2	50	HB4134	409
15	2 D	6	HB4134	409
15	2 E	8	HB4134	409
16	1	13 a	HB4134	409
16	2 I	10	SB597	1032
16	4 C	5 a	HB4143	961
16	5 P	15	HB4134	409
16	5 Q	3	HB4134	409
16	29 B	28	HB4134	409
16	41	7	HB4134	409
17	2 A	1 a	HB4134	409
17 A	2	24	HB4134	409
17 A	6	18 b	HB4134	409
17 B	1 D	10	HB4134	409
18	2 F	1	SB648	436
18	2 F	2	SB648	436
18	2 F	3	SB648	436
18	2 F	4	SB648	436
18	2 F	5	SB648	436
18	2 F	6	SB648	436
18	2 F	7	SB648	436
18	2 F	8	SB648	436
18	2 F	9	HB4134	409
			SB648	436
18	7 A	5	SB648	436
18	7 A	6	SB648	436

CODE REPEALED - (Continued):

18	7 A	7	SB648	436
18	7 A	8	SB648	436
18	7 A	9	SB648	436
18	7 A	10	SB648	436
18	9 D	18	HB4134	409
18	10 C	3	HB4134	409
18	10 L	8	HB4134	409
18	23	1	HB4026	577
18	23	2	HB4026	577
18	23	3	HB4026	577
18	23	4	HB4026	577
18	23	5	HB4026	577
18	23	13	HB4026	577
18	23	14	HB4026	577
18	23	15	HB4026	577
18	23	18	HB4026	577
18	23	22	HB4026	577
18	23	23	HB4026	577
18	23	24	HB4026	577
18 A	3 A	4	HB4134	409
18 B	14	1	HB4026	577
18 B	14	2	HB4026	577
18 B	14	3	HB4026	577
18 B	14	4	HB4026	577
18 B	14	5	HB4026	577
18 B	14	5 a	HB4026	577
18 B	14	6	HB4026	577
18 B	14	7	HB4026	577
18 B	16	6 b	HB4134	409
19	1	3 b	HB4134	409
19	2 B	1 a	HB4134	409
19	2 F	11	HB4134	409
19	23	30	HB4134	409
20	1	18 d	HB4134	409
20	1	21	HB4134	409
20	2	23 f	HB4134	409
20	5	20	HB4134	409
21	1	5	HB4134	409
21	9	13	HB4134	409
21	11	19	HB4134	409
21 A	1	9	HB4134	409
21 A	2	9	HB4134	409
22	1	4	HB4134	409
22	1	7 a	HB4134	409
22	3 A	11	HB4134	409
22	15 A	15	HB4134	409
22	20	2	HB4134	409
22	25	13	HB4134	409
22 B	3	5	HB4134	409
22 C	7	4	HB4134	409

CODE REPEALED - (Continued):

22 C	9	4 a	HB4134	409
22 C	11	6	HB4134	409
24	1	10	HB4134	409
25	1	2	HB4134	409
29	1	1 b	HB4134	409
29	1 A	5	HB4134	409
29	2	10	HB4134	409
29	3	31	HB4134	409
29	6	5 a	HB4134	409
29	12	12	HB4134	409
29	18	24	HB4134	409
29	20	7	HB4134	409
29	21	3 a	HB4134	409
29	22	26	HB4134	409
30	3	18	HB4134	409
			SB372	1590
30	4	30	HB4134	409
30	5	25	HB4134	409
30	5	29	HB4134	409
30	6	32	HB4134	409
30	7	17	HB4134	409
30	7 A	12	HB4134	409
30	7 B	10	HB4134	409
30	8	2 a	SB230	1600
30	8	2 b	SB230	1600
30	8	3 a	SB230	1600
30	8	3 b	SB230	1600
30	8	5 a	SB230	1600
30	9	32	HB4134	409
30	10 A	1	HB4144	1625
30	10 A	2	HB4144	1625
30	10 A	3	HB4144	1625
30	10 A	4	HB4144	1625
30	10 A	5	HB4144	1625
30	10 A	6	HB4144	1625
30	10 A	7	HB4144	1625
30	10 A	8	HB4144	1625
30	10 A	9	HB4144	1625
30	12	15	HB4134	409
30	13	25	HB4134	409
30	13 A	26	HB4450	1551
30	13 A	27	HB4450	1551
30	13 A	28	HB4450	1551
30	13 A	29	HB4450	1551
30	13 A	30	HB4450	1551
30	13 A	31	HB4450	1551
30	13 A	32	HB4450	1551

CODE REPEALED - (Continued):

30	13 A	33	HB4450	1551
30	13 A	34	HB4450	1551
30	13 A	35	HB4450	1551
30	13 A	36	HB4450	1551
30	13 A	37	HB4450	1551
30	14	16	HB4134	409
30	20	8 a	HB4140	1686
30	21	16	HB4134	409
30	22	29	HB4134	409
30	23	30	HB4134	409
30	30	14	HB4134	410
30	32	22	HB4134	410
30	34	17	HB4134	410
30	35	15	HB4134	410
30	36	20	HB4134	410
30	37	12	HB4134	410
30	38	19	HB4134	410
30	40	28	HB4134	410
31	16	5	HB4134	410
31 A	3	5	HB4134	410
33	12 B	2	HB4260	1132
33	12 B	13	HB4260	1132
33	15 B	4	SB665	1144
33	17	9 a	HB4038	1138
33	34	11	HB4128	1156
33	34 A	1	HB4128	1156
33	34 A	2	HB4128	1156
33	34 A	3	HB4128	1156
33	34 A	4	HB4128	1156
33	34 A	5	HB4128	1156
33	34 A	6	HB4128	1156
33	34 A	7	HB4128	1156
33	34 A	8	HB4128	1156
48	18	134	HB4134	410
48	26	1102	HB4134	410
48	27	803	HB4361	525
61	1	6	SB457	438
61	2	17	SB457	438
61	2	18	SB457	438
61	2	19	SB457	438
61	2	20	SB457	438
61	2	21	SB457	438
61	2	22	SB457	438
61	2	23	SB457	438
61	2	24	SB457	438
61	2	25	SB457	438
61	6	16	SB457	438
61	8	3	SB457	438
61	8	4	SB457	438

61	8	15	SB457	438
61	10	18	SB457	438
61	10	25	SB457	438
61	10	26	SB457	438
61	10	27	SB457	438
61	10	28	SB457	438
61	10	29	SB457	438

CODE REPEALED (STATUTORY):
Education
Obsolete sections
Repealing 33 436
Flags
Displaying certain
Eliminating penalties 34 438
Non-utilitized Code sections
Repealing 32 408

CONSUMER LENDERS:
Mortgage loan originators
Licensed or registered 35 440

CONTROLLED SUBSTANCES:
Controlled Substances Monitoring Act
Prescribers or dispensers
Online access
Requiring 39 449
Required information 38 447
Methamphetamine Laboratory Eradication Act
Definitions 40 452
Pseudoephedrine and other chemical precursors
Who may sell or possess 40 452
Prescriptions
Unlawfully withholding information
Penalties
Increasing 36 444
Salvia divinorum
Manufacture or possession of
Criminal penalties
Creating 37 445

CORPORATIONS:
Business organizations and associations
Secretary of State
Annual reports
Filing deadlines 42 463
Incorporation
Process of
Requirements
Clarifying 41 459

CORRECTIONS:
Corrections, Division of
Criminogenic risk and need instruments
Utilization of
Allowing 43 478

COUNTIES:
County deposits
Bonds
Requiring 44 479

COURTS AND THEIR OFFICERS:
Circuit court districts
Business Court Division
Establishing 45 482

CRIMES AND THEIR PUNISHMENT:
Child abuse
Statutory language
Revising 48 491
Emergency service personnel
Assaulting
Creating offense 46 485
Jerry Alan Jones Act 47 487
Law-enforcement officers
Crimes against
Increasing penalties 47 487
Volunteer firefighters
Assaulting
Creating offense 46 485

CRIMINAL DETENTION:
County or municipal jails
Utilize
Circuit court judges and magistrates
Allowing 49 494

CRIMINAL PROCEDURE:
Inmates
Early parole
Eligibility 50 502

DEPOSIT PLACEMENT PROGRAM:
Federally insured accounts
Deposit public funds
Counties, municipalities, the state, county boards
of education
Enabling 51 512

DOMESTIC RELATIONS:
Domestic violence matters
Conditions and arrest 53 526
Information sharing
Provisions prohibiting
Removing certain 52 525

DOMESTIC VIOLENCE:
Domestic violence matters
Conditions and arrest 53 526
Protective orders
Issuance of
Family court judges
Authorizing 54 529

DRIVER'S LICENSES:
Commercial driver's licenses
Requirements
Updating 55 537

EDUCATION:
Boards of Education
Membership
Eligibility requirements
Modifying 59 713
Boards of Governors
Powers and duties 56 592
Capital projects and facilities needs
Campus development plans 56 644
Capital appropriation requests 56 647
Capital project financing 56 649
Capital project management 56 651
Condemnation 56 665
Definitions 56 640
Higher education facilities information system 56 655
Lease-purchase
Authorizing 56 658
Legislative intent 56 637
Legislative rule 56 665
Maintenance 56 655
Property
Sale of
Authorizing 56 657
Proceeds 56 657
System capital development planning 56 643
Community and technical colleges
Changing certain names 69 841

EDUCATION - (Continued):
Council for Community and Technical College
Education, Council for
Powers and duties 56 599
Graduation rates
High school
Improving 63 735
Higher education
Capital facilities 56 577
Offices
Location requirements
Removing 68 806
Student veterans
Service and facilities
Providing 70 857
Higher Education Policy Commission
Energy and Water Savings Revolving Loan Fund
Authorizing rules 71 861
Powers and duties 56 580
Innovation Zone Plans
Certain statutes
Granting exceptions 61 728
Instructional days
One hundred eighty days
Guaranteeing 60 718
Limited English proficient students
Alternative programs
Supplemental funding
Providing 65 762
Real property
Contracts and agreements
Review of 56 579
Regional Education Service Agencies
Foundation allowance
Maximum 64 761
School Building Authority
Certain outstanding bonds
Authorizing issuance 66 763
School bus supervisor
Certified to operate a school bus
Requiring 67 776
Student achievement
Promoting 58 677
Teachers Retirement System
Additional service credit
Certain members
Extending the time 62 731
Textbooks
Process for adopting
Updating 57 666

ELECTIONS:
Electronic poll book
Printed poll book
Counties
Providing discretion 75 918
Judicial Vacancy Advisory Commission
Establishing 77 947
Legislative vacancies
Procedures
Clarifying 78 950
Military and Overseas Voter Empowerment Act of 2009
Conforming appropriate sections 74 901
Regulation and control 76 920
Supreme Court of Appeals, West Virginia
Pubic Campaign Financing Pilot Program
Alternative public campaign financing option 72 874
Certification of candidates 72 880
Contributions 72 876
Restrictions 72 886
Declaration of intent 72 876
Definitions 72 870
Expenditures 72 876
Restrictions 72 886
Exploratory period 72 876
Legislative findings and declarations 72 869
Public Campaign Financing Fund 72 874
Payments
Schedule and amount 72 893
Penalties
Civil 72 895
Criminal 72 894
Sources of revenue 72 875
Qualifying contributions 72 878
Reporting requirements 72 888
Secretary of State
Duties 72 891
Short title 72 869
State Election Commission
Duties 72 891
Voter registration lists
Invalid Code reference
Correcting 73 896

ELEVATORS:
Elevator safety
Definitions 79 953
Licensure
Classifications 79 956

EMERGENCY MEDICAL SERVICES:
Emergency Medical Services Act
Agency licensure 80 968
Definitions 80 962
Commissioner of the Bureau for Public Health
Powers and duties 80 964
Personnel
Standards 80 969

ENERGY:
Energy, Division of
Duties 81 977
Renewable energy resource
Recycled energy
Recategorizing 82 982

ENVIRONMENTAL PROTECTION:
Environmental Protection Advisory Council
Rule-making authority 83 988
Environmental Protection, Department of
Secretary
National Pollutant Discharge Elimination System
Issuance
Authorizing 85 994
Oil and gas drilling
Geologic information
Reporting 84 991

ERIN'S LAW:
Motor vehicle accident
Failing to stop and render aid
Criminal penalty
Increasing 86 1001

FAIRMONT:
City Council
Levying body
Extending time 204 2210

FIDUCIARIES:
Fiduciary commissioners
Oversight
Providing 87 1003

FIRE FIGHTING:
Fire departments
Volunteer and part time
Workers' Compensation premiums
Allocating revenues for 88 1006

FIRE FIGHTING - (Continued):
Firefighters
Paid
Thirty-five years of age
Subsequent employment 89 1009

GUARDIANSHIP:
Protected person
Guardian
Duties and reports 90 1013

HAZARDOUS WASTE:
Hazardous waste management fee
Continuing 91 1016

HEALTH:
Abortions
Ultrasound image
Opportunity to view
Requiring 94 1032
Automated external defibrillators
Liability
Limitation 93 1031
Emergency Medical Services Retirement System Act
Definitions
Modifying 95 1038
Fund
Actuarial valuations 95 1052
Creating 95 1051
Employer contributions 95 1052
Investments 95 1051
Members' contributions 95 1052
Members 95 1048
Health care practitioners
Credentialing
Providing uniform 92 1019

HIGHER EDUCATION CAPITAL PROJECTS:
Funding 96 1059

HOLIDAYS:
Pearl Harbor Day
December 7
Declaring 97 1072

HORSE AND DOG RACING:
Racetrack Video Lottery Fund
Expenditures of moneys 98 1073

HUMAN SERVICES DEFINITIONS:
Adult social services
Definitions
Updating language 99 1120

HUNTING AND FISHING:
Beaver (Castor canadensis)
Pelts
Trapping and tagging 101 1124
Game trap markings
Increasing 100 1123

INMATES:
Juveniles
Medical treatment 102 1128
Pregnancy
Mechanical restraints
Prohibited 102 1127
State institutions or facilities
Transfer of 102 1126

INSURANCE:
Adjusters
Company, public and crop 104 1134
Definitions 104 1133
License
Expiration 104 1136
Nonresident 104 1135
Qualifications 104 1134
Renewal 104 1136
Denial 104 1137
Fire insurance proceeds
Statutory lien
Imposing 105 1138
Releasing 105 1143
Health Maintenance Organizations
Point of service options
Authorizing 107 1148
Insurance companies
Administrative supervision 108 1157
Hazardous condition
Determining 108 1157
Political subdivisions
Workers' compensation risks
Risk pools
Establishing 103 1129
Professional employer organizations
Operating without a license
Penalties 109 1166

INSURANCE - (Continued):
Uniform Health Care Administration Act
Insurance Commissioner
Standardized forms and classifications
Use of 106 1146
Legislative findings 106 1145
Scope 106 1145
Violation
Penalties 106 1147

LABOR:
Equal Pay Commission
Members
Adding 112 1173
Termination date
Removing 112 1174
Labor, Division of
Employees legal employment status
Verifying 110 1167
Public construction projects
Local labor
Requiring 111 1171

LAND USE PLANNING:
Community Enhancement Act
Community enhancement district
Creation or expansion
Petition for 115 1192
Definitions 115 1188
Municipal Panning Commissions
Members
Specifying number 113 1175
Subdivisions
Vesting periods
Extending 114, 115 1180, 1186
Zoning Appeals, Board of
Members
Specifying number 113 1178

LEGISLATIVE RULES:
Promulgation
Administration, Department of 116 1198
Agriculture, Commissioner of 122 1241
Alcohol Beverage Control Commission 120 1229
Athletic Commission 120 1230
Barbers and Cosmetologists, Board of 122 1243
Conservation Agency 122 1241

LEGISLATIVE RULES - (Continued):
Promulgation - (Continued):
Consolidated Public Retirement Board 116 1199
Corrections, Division of 119 1217
Counseling, Board of Examiners in 122 1238
Energy, Division of 123 1274
Environmental Protection, Department of 117 1203
Fire Marshal 119 1217
Governor's Office of Health Enhancement 122 1270
Hatfield-McCoy Regional Recreation Authority 123 1274
Health and Human Resources, Department of 118 1213
Health Care Authority 118 1212
Highways, Commissioner of 121 1235
Homeland Security and Emergency Management 119 1218
Insurance Commissioner 120 1225
Licensed Practical Nurses, State Board of Examiners for . . 122 1238
Lottery Commission 120 1230
Medicine, Board of 122 1241
Motor Vehicles, Division of 121 1233
Natural Resources, Division of 123 1271
Occupational Therapy, Board of 122 1265
Osteopathy, Board of 122 1263
Outdoor Heritage Conservation Fund 123 1272
Personnel, Division of 116 1198
Psychologists, Board of 122 1269
Real Estate Appraiser Licensing and Certification Board . . . 122 1263
Secretary of State 122 1264
Speech-Language Pathology and Audiology, Board of 122 1262
State Police 119 1216
Tax Department 120 1221
Tourism, Division of 123 1272

LEGISLATURE:
Legislative reports
Centralized filing system
Creating 124 1276

LEVIES:
Education, Boards of
Dates of meetings
Correcting inconsistencies 126 1282
Municipalities or counties
Issuing bonds
Clarifying 125 1277

LIMITED LIABILITY PARTNERSHIPS:
Registration requirements
Updating 127 1286

LITTERING:
Penalties, civil and criminal
Increasing 128 1293

LOCAL LAWS:
Boone County
Board of Education
Levying body
Extending time 203 2209
Fairmont
City Council
Levying body
Extending time 204 2210
Marshall County
Park and Recreation Board
Membership
Increasing 205 2211
Moorefield
Wastewater treatment plant
Authorizing 206 2213

LOTTERY:
Lottery Revenue Bond Act
Lottery revenue bonds
Counties
Issuance of 129 1306
Powers 129 1306
Education, Board of
Issuance of 129 1310
Municipalities
Issuance of 129 1309
Proceeds 129 1312
Redemption 129 1314
Definitions 129 1305
Short title 129 1305

MARSHALL COUNTY:
Park and Recreation Board
Membership
Increasing 205 2211

MENTAL HYGIENE:
Mental Hygiene Procedures Pilot Project
Termination date
Extending 130 1327

MINES AND MINING:
Coal Mine Health and Safety, Board of
Compensation of
Changing 131 1336
Powers and responsibilities 131 1336

MOOREFIELD:
Wastewater treatment plant
Authorizing 206 2213

MORTGAGE FORECLOSURES:
Housing Development Fund
Corporate powers 132 1370
Residential mortgage foreclosure date
Gathering, compilation and publication of 132 1369

MOTOR VEHICLES:
Administrative Hearings, Office of
Chief Hearing Examiner
Appointment of 136 1500
Establishing 136 1500
Jurisdiction 136 1503
Organizing 136 1501
Procedures 136 1503
Transition of duties 136 1504
Alcohol test and lock program
Participation 136 1462
Diesel-Powered Motor Vehicle Idling Act
Definitions 137 1511
Enforcement 137 1517
Exceptions 137 1513
Notification 137 1517
Penalties 137 1517
Preemption 137 1518
Restrictions 137 1513
Signs 137 1517
Weight limitation 137 1516
Erin's Law
Motor vehicle accident
Failing to stop and render aid
Criminal penalty
Increasing 86 1001
Mini-trucks
Registration
Exemption 133 1389
Motor Vehicles, Division of
Electronic insurance verification program
Authorizing 134 1394
License plates
Special
Authorizing 135 1410

MOTOR VEHICLES - (Continued):
Search and seizure
With consent 175 1837
Traffic offenses
Driving under influence of alcohol, controlled
substances or drugs 136 1453

MUNICIPALITIES:
Municipal Police Officers and Firefighters Retirement System
Members
Social Security benefits
Extending 140 1522
Parking enforcement officers
Powers
Expanding 139 1521
Vacant building registration program
Authorizing 138 1518

NATURAL RESOURCES:
Game or protected species of animal
Injury or death
Forfeiture by person causing 141 1524
Hunting, trapping or fishing
Lands of another
Damages and restitution 141 1527
Natural Resources, Division of
License and stamp fees
Effective date 142 1529
Indexing 142 1529

NONPROFIT YOUTH ORGANIZATIONS:
Nonprofit Adventure and Recreational Activity Responsibility Act
Definitions 143 1531
Legislative purpose 143 1530
Nonprofit youth organization
Duties 143 1533
Liability 143 1535
Participants
Duties 143 1534
Liability 143 1536
Short title 143 1530

PEIA:
Public Employees Insurance Act
Permissive participation 144 1537
Exemptions 144 1537

PERSONNEL:
Personnel, Division of
Functions 145 1540

POLICE DEPARTMENTS:
Chiefs or deputy chiefs
Expiration of term
Previously held positions
Reinstating 146 1541

PRESCRIPTION DRUGS:
Official Prescription Program Act
Definitions 147 1547
Establishing 147 1548
Exclusions 147 1549
Legislative findings 147 1546
Legislative rules 147 1549
Reporting requirements 147 1550
Short title 147 1546

PROFESSIONS AND OCCUPATIONS:
Forester, registered
Certified
Requirements 157 1684
Land surveyors
Applicable law 148 1559
Definitions 148 1559
Fees 148 1571
Professional Surveyors, Board of 148 1566
Powers and duties 148 1567
Rule-making authority 148 1570
Surveying license
Education requirements 148 1571
Exemptions 148 1578
Unlawful acts 148 1558
Marriage and family therapy
License
Requirements 161 1734
Medicine, Board of
Definitions 149 1591
Members
Compensation 149 1594
Powers and duties 149 1592
Purpose 149 1590
Nursing, Center for
Data collections
Responsibilities 151 1596

PROFESSIONS AND OCCUPATIONS - (Continued):
Nursing home administrators
Applicable law 160 1718
Definitions 160 1718
Fees 160 1725
License
Display 160 1730
Inactive 160 1729
Qualifications 160 1726
Exceptions 160 1726
Renewal 160 1729
Licensing Board 160 1719
Powers and duties 160 1722
Rulemaking 160 1724
Permits
Temporary and emergency 160 1728
Unlawful acts 160 1718
Optometrists
Applicable law 152 1602
Definitions 152 1602
Fees 152 1610
Injectable pharmaceutical agents
Administration of 152 1616
License 152 1610
Exceptions 152 1613
Issuance 152 1614
Jurisdiction
From another 152 1615
Renewal fee 152 1614
Temporary permits 152 1614
Volunteer 152 1618
Civil immunity 152 1618
Optometry, Board of 152 1604
Powers and duties 152 1606
Rulemaking 152 1608
Practice of optometry without a license or permit
Prohibiting 152 1600
Prescriptive authority 152 1616
Scope of practice 152 1611
Unlawful acts 152 1601
Osteopathic physician assistants
Definitions
Clarifying 154 1652
Physical Therapy, Board of 158 1690
Applicable law 158 1688
Definitions 158 1688
Fees 158 1697
License 158 1697

PROFESSIONS AND OCCUPATIONS - (Continued):
Physical Therapy, Board of - (Continued):
Licensed - (Continued):
Display 158 1709
Jurisdiction
From another 158 1701
Renewal 158 1706
Temporary permits 158 1702
Powers and duties 158 1692
Rulemaking 158 1695
Scope of practice 158 1698
Unlawful acts 158 1687
Private investigative and security services
Violations
Penalties 156 1683
Radiologist assistants
Regulation of 159 1713
Registered Professional Nurses
Pilot program 150 1596
Sanitarians, Board of 155 1668
Applicable law 155 1666
Definitions 155 1667
Fees 155 1674
License
Display 155 1679
Qualifications 155 1675
Renewal 155 1678
Powers and duties 155 1671
Rulemaking 155 1673
Unlawful acts 155 1666
Veterinary Medicine, Board of 153 1631
Animal euthanasia technician
Requirements 153 1642
Scope of practice 153 1644
Applicable law 153 1627
Definitions 153 1627
Fees 153 1636
License
Display 153 1648
Renewal 153 1645
Requirements 153 1637
Temporary permits 153 1646
Powers and duties 153 1633
Rule-making authority 153 1635
Scope of practice 153 1638
Unlawful acts 153 1627

PUBLIC EMPLOYEES INSURANCE:
Deceased public employee
Surviving spouse
Comprehensive group health insurance coverage 162 1737
Finance Board
Annual retiree premium increases
Offset 164 1745
Pre-existing condition
Definition
Clarifying 163 1744

PUBLIC SAFETY:
Military Affairs and Public Safety, Department of
Justice and Community Services
Incorporated in and administered by 165 1750
West Virginia Servicemembers Civil Relief Act
Creating 166 1763

PUBLIC SERVICE COMMISSION:
Electric power
Industrial consumers
Energy intensive
Special rates 167 1765
High voltage transmission lines
Construction of
PSC approval 168 1769

PURCHASING DIVISION:
Director of Purchasing
Powers and duties 169 1775
Small, women and minority-owned business 169 1786
Preferences in other states
Reciprocity 169 1788
Vendors
Resident
Preference 169 1782

RAIL AUTHORITY:
West Virginia State Rail Authority
Powers and duties 170 1790
State rail plan
Requiring 170 1796

RAFFLES:
Definitions
Clarifying 171 1796

ROADS AND HIGHWAYS:
Parkways, Economic Development and Tourism Authority
Renaming and reorganizing 172 1802
Traffic crashes
Reporting procedures
Updating 173 1827

SCHOOL BUSES:
Cameras
Authorizing 174 1836
Overtaking and passing
Penalties
Increasing 174 1834

SEARCH AND SEIZURE:
Motor vehicles
With consent 175 1837

SOLID WASTE MANAGEMENT:
Landfills
Covered electronic devices
Disposal
Prohibiting 176 1841

STATE FIRE CODE:
State Fire Commission
Fire ordinances and regulations
County and municipal
Approval 177 1847

STATE LEASING:
Adjutant General
Exempting 178 1850
National Guard
Exempting 178 1850

STATE POLICE:
Membership
Age of applicants
Limiting 179 1854

STATE REGISTER:
Subscribers
Electronic format option
Providing 180 1856

STATE VEHICLES:
Central motor pool
Establishing 181 1862
Management of 181 1859
Travel rules 181 1862
Exceptions 181 1862

STREET GANGS:
Anti-Organized Criminal Enterprise Act
Definitions 182 1869
Exempted activities 182 1872
Findings 182 1868
Forfeiture 182 1872
Offenses 182 1870
Premises
Unlawful use
Remedies 182 1871
Racial profiling
Prohibiting 182 1866

TATTOOS:
Licensed tattoo artists
Magnetic resonance imaging studies
Potential problems
Inform patrons
Requirements 183 1873

TAXATION:
Ad valorem property taxes
Real and personal property
Taxation of 185 1880
Business registration tax
Certain exemptions 188 1944
Commercial Patent Incentives Tax Act
Definitions 189 1953
Developing patents
Tax incentives 189 1958
Effective date 189 1968
Interpretation and construction 189 1968
Legislative findings and purpose 189 1953
Promulgation of rules 189 1967
Records
Failure to keep 189 1966
Requiring 189 1965
Short title 189 1953
Tax credit 189 1962
Review and accountability 189 1967

TAXATION - (Continued):
Commercial Patent Incentives Tax Act - (Continued):
Records - (Continued):
Termination 189 1968
Transfer 189 1964
Corporation Net Income Tax Act
Updating terms 193 2012
Delinquent land sales
Transferring requirements 194 2014
Personal Income Tax Act
Updating terms 192 2010
Real property
Class II
Procedures, notice and redemption
Requirements 195 2042
Sales and Use Tax Administration
Definitions 191 1974
Direct mail sourcing 191 2003
Effective date 191 2008
Remittances of funds
Uniform rules 191 2008
Seller registration 191 2001
Streamlined Sales and Use Tax Agreement
Defining 191 2001
Uniform tax returns 191 2007
Single dwelling residential housing index and multiplier
Creating 184 1878
Tax Procedure and Administration Act
Additions to tax 187 1939
Tax returns
Electronic filing 186 1927
Telecommunications tax
Study of 190 1969

TECHNOLOGY:
Technology, Office of
Information Services and Communications Division
References
Changing 196 2045

TOBACCO:
Selling to minors
Penalties
Increasing 197 2053

TRAFFIC REGULATIONS:
Speed-measuring devices
Prima facie evidence 198 2057
Training
Law-enforcement officers
Requiring 198 2056

TRANSPORTATION PROJECTS:
Community Empowerment Transportation Act
Comprehensive agreement 199 2080
Counties
Powers conferred upon 199 2075
Revenue bonds
Issuance of 199 2077
Definitions 199 2067
Legislative findings 199 2066
Plan review 199 2070
Severability 199 2086
Short title 199 2066
Public bonded indebtedness
Purposes for bonds 199 2060

UNIFORM STATE MILITARY CODE OF JUSTICE:
Adopting 200 2087

UNLAWFUL SPEECH:
Outmoded criminal sections
Repealing 34 438

UTILITIES:
Water and sewer utility service
Delinquent bill
Discontinuation 201 2182

WORKERS' COMPENSATION:
Death benefits
Notice of need 202 2204
Occupational pneumoconiosis 202 2204

FIRST EXTRAORDINARY SESSION, 2010

APPROPRIATIONS:
Supplemental
Administrative Hearing, Office of 10 2248
Agriculture, Department of 2 2224
Land Protection Authority 6, 8 2237, 2241
Conservation Agency, West Virginia 2 2225
Corrections, Division of 5 2234
Culture and History, Division of 11 2261
Development Office, West Virginia 2, 11 2226, 2258
Education and the Arts, Department of 11 2260

APPROPRIATIONS - (Continued):
Supplemental - (Continued):
Education, State Board of 11 2259
Vocational Division 11 2259
Education, State Department of 2 2226
Aid for Exceptional Children 2 2227
Finance, Division of 5 2233
Governor's Office
AARA NTIA Broadband Infrastucture Grant Program . . . 6 2236
Economic Opportunity Community Services 1 2222
Health, Division of 6, 11 2238, 2262
Higher Education Policy Commission 9, 11 2245, 2265
Highways, Division of 4, 10 2231, 2248
Homeland Security and Emergency Management,
Division of 2 2228
House of Delegates 11 2253
Human Services, Division of 11 2263
Insurance Commissioner 8 2243
Joint Expenses 11 2255
Library Commission 11 2261
Lottery Commission 5 2232
Medicine, Board of 9 2246
Military Affairs and Public Safety, Department of 11 2264
Natural Resources, Division of 8 2242
Public Defender Services 5 2234
Rail Authority, State 8 2243
Real Estate Division 11 2258
Registered Professional Nurses, Board of Examiners . . . 3, 9 2229, 2246
Rehabilitation, State Board of 6, 8 2237, 2242
Senate 11 2251
State Police, West Virginia 11 2263
Travel Management 11 2257
Workforce Investment Act 1, 7 2222, 2239

BEHAVIORAL MENTAL HEALTH SERVICES FUND:
Creating 12 2266

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
9	2	9 c*	SB1010	2266
9	4 C	1	SB1004	2272
9	4 C	5	SB1004	2273
9	5	11 c	SB1004	2274
11	27	10	SB1004	2276
11	27	11	SB1004	2278
15	2	12	SB1003	2337

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

15	10	3	SB1003	2342
15	10 A	2	SB1003	2343
16	1	4	SB1004	2280
16	2 D	2	SB1004	2290
16	2 D	5	SB1004	2300
16	5 F	2	SB1004	2307
16	5 O	2	SB1004	2308
16	22	1	SB1004	2311
16	22	2	SB1004	2311
16	29 A	3	SB1004	2312
16	30	7	SB1004	2315
16	30	24	SB1004	2316
17	24 A	1	SB1003	2345
17	24 A	2	SB1003	2348
17 A	3	23	SB1003	2350
17 C	4	16	SB1003	2354
17 C	5	4	SB1003	2355
18 B	10	7	SB1003	2358
19	20 A	7	SB1003	2360
20	1	13	SB1003	2361
20	2	5	SB1003	2363
20	2	7	SB1003	2371
20	2	15	SB1003	2372
20	2	16	SB1003	2373
20	2	22	SB1003	2373
20	2	22 a	SB1003	2375
20	2	56 a	SB1003	2379
20	2	57 a	SB1003	2381
20	7	1	SB1003	2383
20	7	1 a	SB1003	2386
20	7	1 b	SB1003	2387
20	7	1 c	SB1003	2388
20	7	1 d	SB1003	2390
20	7	1 e	SB1003	2391
20	7	1 f	SB1003	2393
20	7	2	SB1003	2394
20	7	3	SB1003	2395
20	7	4	SB1003	2395
20	7	12 b	SB1003	2397
22	15 A	19	SB1003	2400
27	1	3	SB1004	2316
27	1	6	SB1004	2317
27	1	7	SB1004	2317
27	1	9	SB1004	2318

CODE AMENDED - (Continued):

27	1 A	1	SB1004	2318
27	1 A	4	SB1004	2319
27	1 A	6	SB1004	2321
27	2	1	SB1004	2322
27	2 A	1	SB1004	2323
27	5	9	SB1004	2325
27	9	1	SB1004	2327
27	12	1	SB1004	2328
29	2 A	11 a	SB1003	2405
29	3	12	SB1003	2406
29	15	1	SB1004	2329
29	15	5	SB1004	2329
29	15	6	SB1004	2330
30	29	1	SB1003	2413
36	8 A	1	SB1003	2415
44 A	1	1	SB1004	2331
44 A	1	2	SB1004	2331
49	4 A	6	SB1004	2333
61	7	10	SB1005	2268

CODE REPEALED:

Ch.	Art.	Sec.	Bill No.	Page
27	1A	12	SB1004	2270
27	2	1a	SB1004	2270
27	2	1b	SB1004	2270

CRIMES AND THEIR PUNISHMENT:

Firearms or ammunition
  Unlawful transfer
    Felony offenses
      Creating 13 2267

INTELLECTUAL DISABILITY:

Nomenclature
  Revising 14 2270

NATURAL RESOURCES:

Natural resources police officers
  Conservation officers
    Renaming 15 2335

SECOND EXTRAORDINARY SESSION, 2010

APPROPRIATIONS:
Supplemental
Agriculture, Department of 2 2420
Attorney General 2 2421
Education and the Arts, Department of 3 2424
Education, State Department of 1 2418
Environmental Protection, Division of 3 2424
Governor's Office 4 2425
Miners' Health, Safety and Training 2 2422
Public Employees Grievance Board 2 2421
Secretary of State 1 2418

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
3	3 B	3	HB211	2442
3	10	4 a*	HB201	2448
12	1	12 d	SB2003	2444
18	2	6	SB2010	2429
18	2	38*	SB2006	2435
18	3	12*	SB2009	2440
18	5 C*	1	SB2006	2436
		2	SB2006	2437
		3	SB2006	2439
51	2 A	16	HB212	2427

COURTS AND THEIR OFFICERS:
Family Court
Appellate procedures 5 2427

EDUCATION:
Alternative education programs
Elementary and middle school levels
Pilot Projects
Establishing 6 2429
Collaborative team waivers
Creating
Application 7 2437
Purpose 7 2436
Rulemaking 7 2439

* Indicates new chapter, article or section.

EDUCATION - (Continued):
School teams and school committees
Legislative findings 7 2435
Special community development school
Pilot program
Establishing 8 2440

ELECTIONS:
Military and overseas voting
Pilot program
Extending 9 2441

PUBLIC MONEYS:
Marshall University
Investments 10 2444
West Virginia University
Investments 10 2444

UNITED STATES SENATORIAL SUCCESSION:
United States Senator
Vacancy
Filling 11 2447

FOURTH EXTRAORDINARY SESSION, 2009

ALTERNATIVE AND RENEWABLE ENERGY:
Portfolio Standard
Compliance assessments 1 2464
Definitions 1 2456
Interagency agreements 1 2468
Resource credits 1 2461

APPROPRIATIONS:
Supplemental
Forestry, Division of 2 2471
Governor's Office 2 2471
Highways, Division of 4 2477
Human Services, Division of 2 2472
Military Affairs and Public Safety, Department of 2 2473
Public Service Commission 2 2474
Schools for the Deaf and the Blind, West Virginia 2 2472
Senior Services, Bureau of 3 2475

CODE AMENDED:

Ch.	Art.	Sec.	Bill No.	Page
3	3 B*	1	HB406	2479
		2	HB406	2479
		3	HB406	2479
		4	HB406	2480
5	1	16 a	SB4001	2486
5	10	2	SB4003	2612
5	10	22	SB4003	2619
5	10	22 f	SB4003	2620
5	10	27 a	SB4003	2621
5	10	27 b	SB4003	2627
5	10	27 c	SB4003	2629
5	10	27 d	SB4003	2631
5	10	29	SB4003	2634
5	10 C	3	SB4007	2503
5	10 C	4	SB4007	2507
5	10 C	5	SB4007	2509
5	10 D	1	SB4007	2510
5 B	7*	1	SB4002	2601
		2	SB4002	2602
		3	SB4002	2603
		4	SB4002	2605
		5	SB4002	2605
7	14 D	2	SB4003	2637
7	14 D	3	SB4003	2646
7	14 D	9	SB4003	2647
7	14 D	9 a	SB4003	2647
7	14 D	9 b	SB4003	2653
7	14 D	9 c	SB4003	2655
7	14 D	9 d	SB4003	2657
7	14 D	11	SB4003	2660
8	22	16	SB4007	2515
8	22	17	SB4007	2518
8	22	18 a*	SB4007	2520
8	22	18 b*	SB4007	2526
8	22	19	SB4007	2527
8	22	20	SB4007	2531
8	22	20 a	SB4007	2536
8	22	22	SB4007	2538
8	22	22 a	SB4007	2539
8	22	23 a	SB4007	2542
8	22	27	SB4007	2546
8	22 A*	1	SB4007	2550

* Indicates new chapter, article or section.

CODE AMENDED - (Continued):

		2	SB4007	2550
		3	SB4007	2560
		4	SB4007	2560
		5	SB4007	2561
		6	SB4007	2562
		7	SB4007	2562
		8	SB4007	2563
		9	SB4007	2565
		10	SB4007	2566
		11	SB4007	2571
		12	SB4007	2573
		13	SB4007	2575
		14	SB4007	2576
		15	SB4007	2577
		16	SB4007	2578
		17	SB4007	2579
		18	SB4007	2580
		19	SB4007	2581
		20	SB4007	2582
		21	SB4007	2583
		22	SB4007	2584
		23	SB4007	2585
		24	SB4007	2585
		25	SB4007	2586
		26	SB4007	2586
		27	SB4007	2587
		28	SB4007	2589
		29	SB4007	2590
		30	SB4007	2591
		31	SB4007	2591
		32	SB4007	2591
11	14 C	5	SB4004	2494
11	14 C	48	SB4004	2498
11	15	18 b	SB4004	2498
15	2	25 b	SB4003	2661
15	2	26	SB4003	2664
15	2	27	SB4003	2666
15	2	37	SB4003	2668
15	2	44	SB4003	2670
15	2	45	SB4003	2675
15	2	46	SB4003	2677
15	2 A	2	SB4003	2680
15	2 A	3	SB4003	2685

CODE AMENDED - (Continued):

15	2 A	6	SB4003	2686
15	2 A	6 a	SB4003	2687
15	2 A	6 b	SB4003	2693
15	2 A	6 c	SB4003	2694
15	2 A	6 d	SB4003	2697
15	2 A	8	SB4003	2700
16	5 V	2	SB4003	2702
16	5 V	4	SB4003	2712
16	5 V	12	SB4003	2713
16	5 V	13	SB4003	2718
16	5 V	14	SB4003	2720
16	5 V	14 a	SB4003	2722
16	5 V	16	SB4003	2724
16	5 V	18	SB4003	2726
18	7 A	3	SB4003	2728
18	7 A	14	SB4003	2733
18	7 A	26	SB4003	2736
18	7 A	26 r	SB4003	2738
18	7 A	28 a	SB4003	2739
18	7 A	28 b	SB4003	2745
18	7 A	28 c	SB4003	2746
18	7 A	28 d	SB4003	2749
18	7 B	2	SB4003	2752
18	7 B	12 a	SB4003	2756
18	7 B	13	SB4003	2757
18	7 B	13 b	SB4003	2760
24	2 F	3	HB408	2456
24	2 F	4	HB408	2461
24	2 F	5	HB408	2464
24	2 F	9	HB408	2468
33	3	14 d	SB4007	2592
33	12 C	7	SB4007	2596
51	9	1 a	SB4003	2763
51	9	12 a	SB4003	2765
51	9	12 b	SB4003	2770
51	9	12 c	SB4003	2772
61	11	26	SB4001	2487

ELECTIONS:

Uniformed Services and Overseas Voter
- Pilot Program . . . . . 5 — 2479
  - Requirements
    - Minimum . . . . . 5 — 2480
- Secretary of State
  - Process for selection . . . . . 5 — 2479
- Short title . . . . . 5 — 2479

EXPUNGEMENT OF RECORDS:
Existing Law
Legislative Intent
Clarification 6 2486
Governor
Records
Expungement order
Exemption 6 2485
Legislature
Records
Expungement order
Exemption 6 2485
Secretary of State
Records
Expungement order
Exemption 6 2485

MOTOR FUEL EXCISE TAX:
Rates
Computations
Minimum values
Adjusting 7 2493

PENSIONS:
Consolidated Public Retirement Board
Municipal police officers and firefighters
Newly hired
Retirement system
Authorizing 8 2501

RECOVERY ZONE BONDS:
Counties
Issuance of
Authorizing 9 2601

RETIREMENT SYSTEMS:
Consolidated Public Retirement Board
IRS Code
Compliance 10 2606